¶ Hereafter foloweth a Dyaloge in Englysshe/ bytwyxt a Doctoure of Dyuynyte/ and a Student in the Lawes of Englande: of the groundes of the sayd Lawes and of Conscyence/

by Christopher Saint Germain

¶ It is to vnder
stande that though this Dyaloge
in many places agreyth with the
Dyaloge / that was lately drawen in
Laten / bytwyxte a Doctoure / and a
Student of the same groundes / yet
it can not be taken as a translacion
out of that Dyaloge in laten / for
there be dyuers thynges put in to
this Dyaloge in Englysshe /
that be not in the sayd latyn
Dialoge: and in lykewyse
there be some thyngs in the
latyn Dyaloge / that be
omyttyd in this / as to
the reder wyl appere.

Also in the later ende of this present
Dyaloge is asked this questyon howe the
recoueryes that be vsyde to defete tay
led landes may stande with con-
scyence / and dyuers reasons be
made therin / as to the re-
der wyll appere.

AUG 14 1008

¶ The introduccion.

A Doctoure of diuynyte that was of great acquayntaūce and famylyaritie with a Student in the Lawes of Englande sayd thus vnto hym / I haue had great desyre of longe tyme to knowe whereupon the lawe of Englande is grounded / but bycause moche parte of the lawe of Englande is wrytyn in the frenche tongue / Therfore I can not thrugh myne owne study atteygne to the knowelege therof: for in that tongue I am no thynge expert. And bycause I haue alwayes founde the a faythfull frende to me in all my busynes. Therfore I am bolde to come to the byfore any other to knowe thy mynde what be the verye groundes of the lawe of Englande as thou thynkyst. ¶ Student, that wolde aske a great leasure / and it is also aboue my cūnynge to do it / Neuerthelesse that thou shalte not thynke that I wolde wylfully refuse to fulfyll thy desyre: I shall with good wyl do that in me is to satysfy thy mynde / but I pray the that thou wylte fyrste shewe me somwhat of other lawes that parteyne moste to this mater and that Doctours treate of howe lawes haue bygon. And then I wyll gladly shewe the

as me thynkyth What be the groundes of the lawe of Englãde. ¶ Doctoure) I wyll with good wyll do as thou ſayſte / wherfore thou ſhalte vnderſtande that Doctoures treate of foure lawes the which as me ſemeth partayne moſt to this mater. The fyrſte is the lawe eternall. The ſeconde is the lawe of nature of reaſonable creature / the whiche as I haue harde ſay is called by them that be lernyd i the lawe of Englande the lawe of reaſon. The thyrde is the lawe of god. The fourth is the lawe of man / And therfore I wyll fyrſte treate of the lawe eternall.

¶ Of the lawe eternall. The fyrſte Chapitre.

Doctoure) lyke as there is in euery artyfycer a reaſon of ſuche thynges as are to be made by his crafte / ſo lyke wyſe it behoueth that in euery gouernour there be a reaſon afore ſyght in the gouernour of ſuche thyngs as ſhal be orderyd & done by hym to them that he hath the gouernaunce of. And for as moche as almyghty god is the creature and maker of all

creatures to the whiche he is cõpared as a workeman to his worke. And is also the gouernour of all dedes & mouynges that be foũde in any creature. Therfore as the reason of the wysedom of god in that creatures be create by hym hath the reason of all craftꝭ & warkꝭ that haue ben or shall be made / so the reason of the wysedome of god mouynge all thynges by hym made to a dewe ende opteyneth the name & the reason of a lawe / and that is callyd the lawe eternall. And this lawe eternall is callyd the fyrste lawe / and it is well callyd the fyrste for it was byfore all other lawes. And all other lawes be deryuyed of it / wherupon seynt Augustyne sayth in his fyrste boke of arbyterment that in temporall lawes no thynge is ryght wyse ne lawfull / but that the people haue deryuyed to theym out of the lawe eternall. Wherfore euery man hath right and tytle to haue that he hath ryght wysely of the ryght wyse Jugement of the fyrste reason / whiche is the lawe eternall. ¶ Student) but howe may this lawe eternall be knowen: for as the apostle writeth in the. v. chapitre of his fyrste epystle to the Corinthyes. Quæ sunt dei nemo scit nisi spiritus dei / That is to saye / no man knowyth what is in god but the spyryte of

Quæ sunt dei nemo scit nisi spiritus dei

god/ Wherfore it semyth that he loseth to hygh that attemptyth to knowe it. ¶ Doctoure) this lawe eternall no man may knowe as it is in it self/ but only blessyd soules that se god face to face/ but almyghty god of his goodnes shewyth of it as moch to his creaturs as is necessarye for theym/ for els god shuld bynde his creatures to a thynge inpossyble/ whiche maye in no wyse be thought in hym: Therfore it is to vnderstande that thre maner of wayes almyghty god makyth this lawe eternall knowen to his creatures resonable. Fyrste by the lyght of naturall reason. Seconde by heuenly reuelacion. Thirdly by the order of a prynce or of any other secundarye gouernoure/ that hathe power to bynde his subgettes to a lawe. And whan the lawe eternall or the wyll of god is knowen to his creaturs resonable by the lyght of naturall vnderstandynge/ or by the lyght of naturall reason/ then it is callyd the lawe of reason. And when it is shewed by heuenly reuelacion in suche maner as hereafter shal appere/ thenne it is callyd the lawe of god/ And when it is shewed vnto hym by the order of a prynce or of any other secundarye gouernoure that hath power to set a lawe vpō his subgettes/ then it is callyd the lawe of man/ thoughe

oryginallye it be made of god/for lawes made by man/that hath receyued therto power of god be made by god. Therfore the sayde thre lawes/that is to saye/ the lawe of reason/the lawe of god/and the lawe of man/the which haue seuerall names after the maner as they be shewyd to man be callyd in god one lawe eternall. And this is the lawe of whome it is wryttyn. Prouerbiorum octauo / where it is sayde per me reges regnant et legũ conditores iusta discernunt / And this suffyceyth for this tyme of the lawe eternall.

¶ Of the lawe of reason the whiche by Doctoures is callyd the lawe of nature of resonable creature. The seconde chapitre.

Doctoure) Fyrste it is to be Understande that the lawe of nature may be consydered in two maners/ that is to say/ generally and specially When it is consyderede generally/then it is referred to al creatures as well resonable as Unresonable/ for all Unresonable creatures lyue Under a certayne rewle to them gyuen by nature necessary for them to the cõseruacion of theyr beynge / but of this lawe it is not our intent to treate at this tyme

The lawe of nature specially cōsydered / whi
che is also callyd the lawe of reason partey-
nyth only to creatures resonable that is man /
whiche is create to the Image of god. And
this lawe oughte to be kepte as well amonge
Jewes and gentyls / as amonge crysten men
And this lawe is alway good and ryght wy
se styrrynge and enclynynge a man to good ⁊
abhorryng euyl / ⁊ as to the orderyng of the de
des of man / it is preferryd before the lawe of
god. And it is wrytyn in the herte of euery mā
techynge hym what is to be done / and what
is to be fled. And bycause it is wrytyn in the
herte / therfore it may not be put away ne it is
neuer chaūgeable by no dyuersytie of place ne
tyme. And therfore agaynst this lawe prescri
pcion statute nor custome may not preuayle /
and if any be brought in agaynst it they be no
p̄scripcions statutꝫ nor customes / but thyngꝫ
voyde ⁊ agaynst iustyce. And al other lawes
as wel the lawes of god as to the actes of mē
as other be grounded therupon. ¶ Student)
syth the lawe of reason is wrytyn in the herte
of euery man as thou haste sayd byfore techyn
ge hym what is to be done / and what is to be
fled / and the whiche thou sayste may neuer be
put out of the herte / what nedyd it then to ha-

ue any other lawe brought in to order the actꝭ and dedes of the people. ¶ Doctoure) thoughe the lawe of reason may not be chaunged nor holly put away: neuertheles byfore the lawe wrytten it was greatly lette and blynded by euyll customes/ & by many synnes of the peo/ ple besyde the originall syñe: in so moche that it myght hardly be discernyd what was right wyse and what was vnryght wyse/ & what good and what euyll/ wherfore it was necessarye for the good ordre of the people / to haue many thynges added to the lawe of reason as well by the Churche/ as by seculer princes according to the maners of the countrey & of the people where suche addycyons shuld be except syed . And this lawe of reason defferyth fro the lawe of god in two maners: for the lawe of god is gyuen by reuelacion of god: and this lawe is gyuen by a naturall lyght of vnder/ standyng. And also the lawe of god orderyth a man of it selfe by a nygh way to the felycy/ tie that euer shall endure. And the lawe of rea son orderyth a man to the felycitie of this lyfe. ¶ Student) What be tho thingꝭ that the lawe of reason techyth to be done: & what to be fled. ¶ Doctoure) the lawe of reason techyth that good is to be loued/ and euyll is to be fled/ Al

so that thou shalt do to another that thou Wolt dest another shuld do to the: also that We may do no thyng agaynst trouth / Also that a man must lyue peacefully With other. That iusty= ce is to be don to euery man / & that Wronge is not to be done to any mā. And also that a tres passer is Worthy to be punysshed / of the Whi= che folo We dyuers other secundarye cōmaun= dements, the Whiche be as necessarye conclusy ons detryuyed of the fyrste / as of that cōmaun demēt that good is to be belouyd it folo Wyth that a man shall loue his benefactour / for a be nefactour in that he is a benefactour icludyth in hym a reason of goodnes / for els he oughte not to be callyd a good doer / but an euyll doer And so in that he is a benefactoure / he is to be belouyd in all tymes / & in all places. And this la We also sufferyth many thyngs to be done as that it is laufull to put a Waye force With force. And that it is laufull for euery man to defende hym selfe and his goodes agaynst an Vnlaufull po Wer. And this la We rennyth With euery mannes la We / and also With the la We of god as to the dedes of man / and must be al Wayes kepte & obseruyd / & shall al Waye declare What ought to folo We Vpon the gene rall re Wles of the la We of man / and shall re=

ſtrayne theym if they be in any thynge contra ry vnto it. And here it is to be vnderſtande/ that after ſome men / that lawe whereby all thynges were in cõmon was neuer of the lawe of reaſon/but only in the tyme of extreme ne/ ceſſytie: For they ſaye that the lawe of reaſon maye not be chaunged/ and they ſay that it is cuydẽt/ that that lawe of thynges to be i cõmen is chaunged / wherfore they conclude that it was neuer of the lawe of reaſon.

¶ Of the lawe of god. The thyrde chapitre.

Dctoure) the lawe of god is a certayne gyfte gyuen by re/ uelacion to reaſonable creatu re ſhewynge hym the wyll of god / wyllynge that creature reſonable to be bounde to do a thynge or not to do it/for the optaynynge of the felycytie eternall. And it is ſayd (for the op taynynge of the fylycytie eternall) to exclude the lawes ſhewed by reuelacion of god: for the polytycall rewle of the people / the whiche be callyd Judyciall; for a lawe is not ꝓpriely cal kyd the lawe of god by cauſe it was ſhewyd

by reuelacion of god / but also bycause it dyrec
tyth a mā by the neryst way to the felicitie eter
nall as ben the lawes of the olde Testament
that be callyd morales / & the lawe of the Euā=
gelystes: the whiche were shewyd in moch mo
re excelent maner / then the lawe of the olde
Testament was: for that was shewyd by the
medyacion of an Aungell. And the lawe of
the Euangelist̄ by the medyacion of our lord
Jhesu cristo god & man / and the lawe of god
is alway rygh̄t wyse and iuste / for it is made
and gyuen after the wyll of god. And therfo=
re all actes and dedes of man be callyd rygh̄t=
wyse and iuste when they be done accordynge
to the lawe of god and be conformable to it.
Also somtyme a lawe made by mā / is callyd
the lawe of god / As when a lawe takyth his
pryncipall groūde vpon the lawe of god: and
is made for the declaracion or conseruacion of
the faith / and to put away hereseyes as dyuers
lawes Cannons / and also dyuers lawes ma
de by the cōmon people somtyme do. The whi
che therfore are rather to be callyd the lawe of
god then the lawe of man. Yet neuertheles all
the lawes Cannon be not the lawes of god /
For many of them be made only for the poly=
tycall rewle and conuersacyon of the people /

Wherupon Jhon Gerson i the treatyce of the spyrytuell lyfe of the soule the seconde Lesson and the thyrde corollary sayth thus/all the cā/nons of Popes nor theyr Decres / be not the lawe of god/For many of theym be made only for the polytycall cōuersacion of the people And if any man wyll say be not al the goods of the Churche spyrituell: for they bylonge to the spyrytualytie and leed to the spyrytuelltie/ We answere that in the hoole polyticall cōuersacion of the people / there be some specyallye deputed and dydicate to serue god / the whiche moste specyally as by an excellencie ar callyd spyrytuell men / As relygyous men are/ and other thoughe they walke in the Way of god/ yet neuertheles bycause theyr offyce is moste specyally to be occupyed aboute suche thynges as pertayne to the cōmon welth & to the good ordre of the people/they be therfore callyd secu ler men or lay men / neuertheles the goodes of the fyrste may no more be callyd spūell / then the goodes of the other for they be thyngs mere temporall and kepynge the body as they do in the other. And by lyke reason lawes made for the polyticall ordre of the church be callyd ma ny tymes spyrytuell/or the lawes of god/ Ne nertheles it is but Vnpropriely / and other be

callyd Lyuyle or the lawe of man. And i thie
poynte many be oft tymes deceyued, and also
deceyue other the Which Juge tho thyngs to be
spūell / the Whiche all men knowe be thyngs
materyall & carnall. Thyse be the Wordes of
Johñ Berson in the place alegyd byfore. Fur
thermore besyde the lawe of reasō / & the lawe
of man it Was necessarye to haue the lawe of
god for foure reasons. The fyrst bycause man
is ordeyned to the ende of eternall felycytie the
Whiche excedyth the proporcion and facultye
of man. Therfore it Was necessary that besyd
de the lawe of reason and the lawe of man he
shuld be dyrectyd to his ende by a lawe made
of god. Seconde for as moch as for the Uncer
tentie of mānys Jugement specyally of thyn
ges partyculer and seldome fallynge: It hap
penyth ofte tymes to folowe dyuers Jugemē
tes of dyuers men: & also dyuersities of lawes
therfore that a man Without any dought may
knowe What he shall do / & What he shall not
do: It Was necessary that he shuld be dyrectyd
in all his dedes by a lawe heuenlye gyuen by
god / the Whiche is so apparant that no man
may swaruc; fro it. Thyrdly bycause a man
may only make a lawe of such thynges as he
may Juge vpon / and the Jugement of man

may not be of in warde thynges / but onlye of out warde thynges / and neuertheles it belongyth to perfeccion that a man be well orderyd in both. Therfore it was necessary to haue the lawe of god / the whiche shuld ordre a man as well of in warde thyngs as of out warde thinges. The fourth is bycause as seynt Augustyne sayth in the fyrste boke of fre arbytrement / the lawe of man may not punysshe all offences / for if all offences shuld be punysshed / the cõmon welth shuld be hurte as it is of contractes / therfore that no cuyll shuld be vnpunysshed it was necessary to haue the lawe of god that shuld leue no cuyll vnpunysshed.

¶ Of the lawe of man. The fourth chapitre.

Doctoure) The lawe of man / the whiche somtyme is callyd the lawe posytyue is destroyed by reason as a thynge whiche is necessaryly and probably folowynge of the lawe of reason & of the lawe of god. And that is callyd probable that apperyth to many / and specyally to wysemen to be trewe And therfore in euery lawe posityue wel made is somwhat of the lawe of reason / and of

the lawe of god / ⁊ to discerne the lawe of god and the lawe of reason from the lawe posytyue is very harde / ⁊ though it be harde yet it is moche necessary in euery morall doctryne for the cōmon welth. And that the lawe of man be Juste and ryghtwyse / two thynges be necessary / that is to say / wysdome and auctorytie / wysedome that he may Juge after reason what is to be done for the cōmynaltie: ⁊ what is expedyent for a peasyble conuersacyon and necessary sustentacyon of theym / Auctorytye that he haue auctorytie to make lawes / For the lawe is named of Ligare / that is to say / to bynde: But euery sentēce of a wyse man doth not bynde the cōmynaltie if he haue no rewle ouer theym. Also to euery good lawe be requyred thyse propreties / that is to say / that it be honest / ryghtwyse / possyble by reason and after the custome of the countrey: cōuenyent for the place and tyme necessary / profytable / and also manyfest that it be not capcious by any darke sentence ne myxt with any pryuate welth but all made for the cōmon welth. And after saynt Gyrget ī the fourth boke in the. C. xxix chapitre / euery good lawe is ordeyned to the helth of the soule / and to the fulfyllyng of the lawes of god: and to enduce the people to flye

euyll desyres & to do good warkꝫ. Also as the cardynall of Camer̄ wryteth what so euer is ryght wyse ī the lawe of man is ryght wyse in the lawe of god/for euery mānys lawe muste be consonant to the lawe of god. And therfore the lawes of prynces / nor the cōmaūdementꝫ of prelates/the statutes of cōmonalties: ne yet the ordynaunce of the Churche is not ryght/wyse nor oblygatorye / but it be consonant to the lawe of god. And of suche a lawe of man that is consonant to the lawe of god/it appe/ryth who hath ryght to landes and goodes/ & who not/for what so euer a man hath by such lawes of man / he hathe ryght wyselye. And what so euer is hadde agaynst suche lawes is vnryght wyslye had/ For lawes of man not contrarye to the lawe of god / nor the lawe of reason muste be obseruyd in the lawe of the soule / and he that dyspyseth theym dyspyseth god & resystyth god. And furthermore as gra cian sayth bycause euyll men fere to offende for fere of payne. Therfore it was necessarye that dyuers paynes shuld be ordayned for dy/uers offences as Physycions ordayne dyuers remedyes for seueral disseases. And these pay nes be ordayned by the makers of lawes after the necessytie of the tyme: and after the disposi

cion of the people. And though that lawe hath a confermytie to the lawe of god / for that the lawe of god cõmaundeth that the people shall take away euyll from amonge them selfe / yet they belonge not so moche to the lawe of god / but that other paynes stadynge the fyrst prynciples myght be ordayned & appoynted / and this is the lawe that is callyd moste properlye the lawe posityue and the lawe of man. And the Philosopher sayth i the thyrde boke of his etyks that the entent of a maker of lawe is to make the people good / and to bryngе them to vertue. And though I haue somwhat in a generalytye shewyd the wherupon the lawe of Englande is groundyd / For of necessytie it muste be groundyd of the sayd lawes / that is to say / of the lawe eternall / of the lawe of reason / & of the lawe of god: Neuertheles I pray the shewe me more specyally wherupon it is groundyd as thou byfore hast promysed to do.

(Student) I wyll with good wyll do therin that lyeth in me / for thou hast shewyd me a playne & a strayte way therto / Therfore thou shalt vnderstande that the lawe of Englande is groũdyd vpon syxe principall grounds Fyrste it is groundyd on the lawe of reason. Seconde of the lawe of god. Thyrdly of dy-

ters generall customes of the realme. Fourthly of dyuers pryncyples that be callyd mayymes. Fyfthly of dyuers partyculer customes. Syxtely of dyuers statutes made in Parlyaments by the kynge & by the cõmon Councell of the realme/of Whiche grounde I shall speke by order as they be rehercyd byfore/ & fyrste of the lawe of reason.

¶Of the fyrste grounde of the lawe of Englande. The. v. chapitre.

Tudent) The firste groũde of the lawe of Englande is the Lawe of reason/ Whereof thou hafte treatyd byfore ī the fecõde chapitre: the Whiche is kepte in this realme as it is in all other realmes and as of neceſſyte/ it muſte nedes be as thou haſt ſayd byfore. ¶Doctoure) But I Wolde knowe What is callyd the lawe of reaſon after the lawes of englande. ¶Student) There be put by theym that be lernyd in the lawes of Englande two degrees of the lawe of reaſon/that is to ſay the lawe of reaſon primarye and the lawe of reaſon ſecundarye/ by

the lawe of reason Prymarye be ꝓhibit in the lawes of Englãde murther ⁊ the deth of hym that is Innocent / periurye / disceyte / brekyng of the peace and many other lyke. And by the same lawe also it is laufull for a man to defende hym selfe so he kepe dewe cyrcũstaunce. And also if any promyse be made by manas to the body / it is by this lawe voyde in the lawes of Englande. The other is callyd the lawe of a secundarye reason / the whiche is deuyded in to two braunches: that is to say in to the lawe of a secũdarye reason generall. And in to a lawe of a secundarye reason pertyculer The lawe of a secundarye reason generall is groũdyd and deryuyed of that generall lawe or generall custome of ꝓpretye wherby goods mouable and vnmouable be brought in to a certayne ꝓpretye / so that euery man may knowe his owne thinge. And of this lawe be prohibityd in the lawes of Englãde disseasons / trespasse in landes and goodes rescues thefte vnlaufull witholdynge of another mannes goodes and such other. And by the same lawe it is a groũde in the lawes of Englande that satyssfaccion must be made for a trespasse and that restytucion muste be made of suche goods as bylongyth to another man: that dettꝫ must

be payde / couenaunt; fulfylled & suche other. And bycause dysseasons/trespasse in lādes & good; thefte & such other had not ben knowen if the lawe of propretie had not ben ordeyned: Therfore all thynges that be cōmaundyd or ꝓhibityd by the lawe of reasō deryuyed out of the sayde lawe of propretye/ be sayde to be cō-maundyd or prohybit by the lawe of a rea-son secundarye geuerall/for that lawe of pro-pretye is generally kept in all countreys. The lawe of reason secundarye pertyculer is that lawe that is groūdyd vpon dyuers customes generall and pertyculer and of dyuers maxy-mes and statut; ordeyned in this realme. And it is callyd the lawe of reason secundarye per tyculer bycause that reason in that case is dery uyed of suche a lawe that is oonly holden for lawe in this realme and in none other realme And it is not moche vsyd ī the lawes of Eng lande to reason what lawe is groūdyd vpon the lawe of the fyrst reason prymary/or of the lawe of reason secūdarye: for they be moste cō menly opēly knowen of them self/but for the knowlege of the lawe of reason secundarye is greater dyffycultye/ & therin dependyth mo che the maner and forme of argument; in the lawes of Englāde. And it is to be notyd that

all the deryuyeng of reason in the lawes of Englande ꝓcedyth of the fyrste prynciples of the lawe or of some thyng that is deriuyed of them/And therfore no man may ryght wysly Juge ne groũdely reason in the lawes of englande if he be ygnoraunt in the fyrste prynciples. Also all byrdes/fowles/wylde beestes as beestes of forestes and warren and suche other be exceptid out of the sayd generall lawe and custome of proprietye/For by the lawes of the realme no proprietye maye be of them in any person onles they be tame/Neuertheles the eggges of haukes/herons/or suche other as buylde in the grounde of any persone: be adiuged by the sayd lawes to belonge to hym that owyth the grounde.

¶Of the seconde grounde of the lawe of Englande. The. vi. chapitre.

STudent) The seconde groũde of the lawe of Englande is the lawe of god/and therfore to pu nysshe offenders agaynste the lawe of god it is enquered i many courtes in this realme/if any holde any opynyõs secretly or i any other maner agayns

the trewe catholycall fayth. And also if any generall custome were dyrectlye agaynst the sayd lawe/or if any statute were made dyrectly agaynst it/as if it were ordayned that no almes shuld be gyuen for no necessytie that custome and statute were voyde. Neuertheles the statute made in the.xviii.yere of kyng Edwarde the thyrde/wherby it is ordayned that no man vnder payne of Imprysonemēt shal gyue any almes to any valyaūt beggers that may well labour/that they may so be compelyd to labourt for theyr lyuynge is a good statute/for it obseruyth the intent of the lawe of god. Also by auctorytie of this lawe there is a groūde in the lawes of englande that he that is accursed shal mayntene no accion in the kynges courte excepte it be in verye fewe cases so that the same excōmunycacion be certyfied byfore the kyngs Justyces in suche maner as the lawe of the realme hath appoyntyd. And by auctorytie also of this grounde/the lawe of Englande amyttyth the spyrytuell Jurysdycyon of dysmes and offerrynges. And of all other thynges that of ryght bylonge vnto it. And receyuyth also all lawes of the churche dewely made/and that excede not the power of them that made them/In so moche that in

many cases it behouyth the kynges Justyces to Juge after the lawes of the churche.
¶ Doctoure) Howe may that be that the kynges Justyces shuld Juge in the kynges courtes after the lawe of the churche/ for it semyth that the churche shuld rather gyue Jugement in such thyngs as it may make lawes of: then the kynges Justyces. ¶ Student) That may be done in many cases/ wherof I shall for an example put this case. If a wryt of ryght of warde be brought of the bodye &c. And the tenaunt confessyng the tenour and the nonage of the Infaunte/ seyth that the infaunte was maryed in his auncesters dayes &c. wherupon xii. men be sworne whiche gyue this verdyt/ that the Infaunte was maryed in the lyfe of his auncester. And that the woman in the lyfe of his auncester sued a deuorce wheupō sentence was gyuen that they shuld be deuorcyd/ And that the heyre appelyd whiche hangyth yet vndyscussyd prayinge the ayde of the Justyce whether the Infaunte in this case shalbe sayde maryed or not/ In this case if the lawe of the churche be that the sayde sentence of deuorce stande in his strength & vertue vntyll it be adnullyd vpon the sayde appele. Than the Infaunte at the deth of his auncester was

Vnmaryed bycause the fyrste maryage was
adnullyd by that deuorce. And if the lawe of
the Churche be that the sentence of that deuor-
ce standyth not in effecte tyll it be affermyd
vpon the sayde appele / then is the Infaunte
yet maryed so that the value of his maryage
can not belonge vnto the lorde. And therfore
in this case Jugement condycyonell shall be
gyuen. &c. And in lyke wyse the kyngs Justy-
ce in many other cases shal Juge aft the lawe
of the churche lyke as the spirituell Jugs must
in many cases forme theyr Jugemēt after the
kynges lawes. ¶ Doctoure) Howe may that
be that the spirituell Juges shuld Juge after
the kynges lawes / I pray the shewe me some
certayne case therof. ¶ Student) Thoughe it
be somwhat a dygression from our fyrste pur
pose / yet I wyll not withsaye thy desyre / but
wyll with good wyll put the a case or two
therof / that thou mayst the better pceyue what
I meane / if A. and B. haue goodes Joyntly
and A. by his laste wyll byqueth his porcyon
therin to C. And makyth the sayd B. his exe-
cutoure & dyeth / and C. askyth the execucyon
of this wyll in the spirituell courte / In this ca
se the Juges there be boūde to Juge that wyl
to be voyde: bycause it is voyde by the lawes

of the Realme. And in lyke wyse if a man be outlawed and after by his wyll bequeth certayne goodes to Johñ at style/and make his executours & dye/the kynge seasyth the goods and after gyueth theym agayne to the executours and after Jo.at style suyth a sytacyon out of the spirituell courte agaynst the executours to haue execucion of the wyll/in this case the Juges of the spirituell courte muste Juge the wyll to be voyde as the lawe is. And yet there is no suche lawe of forfeture of goods by outlagarye in the spirituell lawe.

¶ Of the thyrde grounde of the lawe of Englande. The. vii. chapitre.

Tudent) The thirde grounde of the lawe of Englande standyth vpon dyuerse generall customes of olde tyme vsyd thorugh all the realme/which haue ben accepted & approuyd by our souerayne lord the kyng & his progenytours and all theyr subgettes. And bycause the sayd customes be neyther agaynst the lawe of god/nor the lawe of reason/and haue ben taken to

be good & necessary for the cõmon Welth of al the realme / Therfore they haue opteyned the strength of a Lawe / in so moche that he that dothe agaynst theym dothe agaynst Justyce. And these be tho customes that propyrly be cal lyd the cõmon lawe. And it shall alway be de termyned by the Justyces Whether there be any suche generall custome or not / and not by .vi. men. And of these generall customes and of certayne pryncyples that be callyd maxymes Whiche also take effecte by the olde custome of the realme / as shal appere in the chapitre next folowynge dependyth most parte of the lawe of this realme. And therfore oure soueraygne lorde the kynge at his Coronacyon amonge other thynges takyth a solempne oth / that he shal cause all the customes of his realme fayth fully to be obseruyd. ¶ Doctoure) I pray the shewe me some of these generall customes. ¶ Student) I Wyll With good Wyll & fryste I shall shewe the howe the custome of the realme is the very grounde of dyuers courtes in the realme / that is to say of the Chauncerye of the kynges Benche / of the cõmon place / and of the Eschekker / the Whiche be courtes of recorde bycause none may syt as Juge in tho courtes: but by the kynges letters patentes. And these

courtꝫ haue dyuers auctorytes wherof it is not to treate at this tyme. Other courtꝫ there be also onlye groundyd by the custome of the realme that be of moche lesse auctorytie then be the courtꝫ byfore rehercyd / as in euery shyre with in the realme there is a courte that is callyd the Countye / and another that is callyd the Shyryffes torne / & in euery maner is a courte that is callyd a Courte baron. And to euery fayre and market is incydent a courte that is callyd a courte of Pypowders. And though in some statutꝫ is made mensyon somtyme of the sayd courtes / Yet neuertheles of the fyrste Instytucyon of the sayd courtes / and that suche courtes shuld be there is no statute nor lawe wryttyn in the lawes of Englande. And so all the grounde and begynnynge of the sayd courtes depende vpon the custome of the realme / the whiche custome is of so hyghe auctorytie that the sayd courtes ne theyr auctoryties may not be alteryd: ne theyr names chaungyd without Parlyament.

¶ Also by the olde custome of the Realme all men shall sue for Justyce / and for theyr ryght in the kynges courtes / and none shall be put to answere nor be Juged but after the lawe of the Realme.

¶ Also by the olde custom of the realme the eldest sone is onlye heyre to his auncestre / and if there be no sonnes but doughters / then all the doughters shalbe heyre / and so it is of susters and other kynnes Women. And if there be nother sone / doughter / brothr / nor suster / then shall the enherytaūce discende to the next kynnesman or kynnes Woman of the hole blode to hym that had the enherytaunce of howe many degrees so euer they be from hym. And if there be no heyre generall nor specyall / then the lande shall eschete to the Lorde of Whom the lande is holden.

¶ Also by the olde custome of the realme landes shall neuer assende nor dyscende from the sone to the Father or mother / nor to any other auncestre in the ryght lyne / but it shall rather eschete to the lorde of the fee.

¶ Also if any alyene haue a sone & after is made Denyzyn: and haue another sone and after purchasyth landes and dyeth / the yonger sone shall enheryte as heyre / and not the eldest.

¶ Also if there be thre bretherne and the myddlest brother purchase landes & dyeth Without heyre of his body the eldest brother shal inheryt as heyre to hym / & not the yonger brother.

¶ Also if lande in fe symple discende to a mā

of the pte of his father & he dyeth without heyre of his body / then that inherytaunce shall dyscende to the next heyre of the parte of his father. And if there be no suche heyres of the parte of his father then the lande shall eschete to the lorde of the fee. And shall not go to the heyres of the pte of his mother / but if a man purchase landes to hym and to his heyres and dye without heyre of his bodye as is sayd byfore / then that lande shal dyscende to the next heyre of the pte of his father if there be any : & if not then to the next heyre of the pte of his mother.

¶ Also if the sone purchasyth landes in fee & dye without heyre of his body / the lande shall dyscende to his vncle and shal not ascende to his father as is sayde byfore / but if the father haue a sone though it be many yeres after the deth of the elder brother / yet that sone shal put out his vncle and shal enioy the lande as heyre to his elder brother for euer.

¶ Also by the custome of the realme the childe that is borne byfore spouselles is basterde and shall not enheryte.

¶ Also the custom of the realme is that no maner of goodes nor chatelles reall nor parsonel shall neuer go to the heyre / but to the executoures or to the ordynarye or admynystratours.

¶Also that the husbōde shall haue all the chatellys psonallys that his Wyfe had at the tyme of the spousellys or after / and also chatellys reall if he ouer lyue his Wyfe / but if he sell or gyue away the chatellys reall and dye by that sale or gyfte the interesste of the Wyfe is determyned / and els they shall remayne to the Wyfe if she ouer lyue her husbonde.

¶Also the husbonde shall haue all the inherytaunce of his Wyfe Wherof he Was seasyd in dede in the ryght of his Wyfe durynge the spousellys in fe or in fe tayle generall: for terme of his lyfe: if he haue any chylde by her / to holde as tenaunt by the curtysye of Englande / and the Wyfe shall haue the thyrde parte of the inherytaunce of her husbonde Wherof he Was seasyd in dede or in la We after the spousells &c. but in that case the Wyfe at the deth of her husbonde muste be of the age of .ix. yere or aboue / or els she shall haue no do Wrye. ¶Doctoure) What if the husbonde at his deth be Within the age of .ix. yere. ¶Student) I suppose she shal yet haue her do Wer.

¶Also the olde La We and custome of the realme is that after the dethe of euery tenaunte that holdeth his landes by knyghtes seruyce the lorde shal haue the Warde and maryage of the

heyre tyll the heyre come to the age of.xxvi.yeres And if the heyre in that case be of full age at the deth of his aunceſtre / then he ſhall paye to his lorde his relyef Whiche at the cõmon lawe Was not certayne / but by the ſtatute of Magna carta / it is put in certayne: that is to ſay for euery hole knyghtes fee to pay a.C.ſhyllyngs And for a hole baronye to pay a hondred marke for relyef. And for a hole erledom to pay a. C.pounde / & ſo after the rate. And if the heyre of ſuche a tenaũte be a Woman / and ſhe at the deth of her aunceſtre be Within the age of.xviii yeres / then by the cõmon lawe ſhe ſhuld haue ben in Warde only tyll.xviii.yere / but by that ſtatute of Weſtmynſter the fyrſte in ſuche caſe ſhe ſhall be in Warde tyll.xxi.yere. And if at the deth of her aunceſtre ſhe be of the age of. xviii.yere or aboue / ſhe ſhall be out of Warde / though the lãdes be holden of the kynge. And then ſhe ſhal pay relyef as an heyre male ſhal.

¶ Alſo of landes holden in ſocage if the aunceſtre dye his heyre beynge Within the age of. xviii.yeres the next frẽde of the heyre to Whom the inherytaunce may not dyſcende ſhal haue the Warde of his bodye & landes tyll he ſhall come to the age of.xviii.yere / and then he may entre / And When the heyre cõmyth to the age

of.xxi.yere/ then the gardeyn shall yelde hym accompte for the profyttes therof by hym receyued.

¶Also suche an heyre in socage for his relyef shall double his rent to the lorde the yere folowyng the deth of his auncestre/as if his auncestre helde by.vii.d.rent / the heyre in the yere folowyng shall pay that.vii.d.for his rent/& other.vii.d. for his relyef. And that relyef he must pay though he be within age at the deth of his auncestre.

¶Also there is an olde lawe and custome in this realme that a freholde by waye of fessement gyfte/or lease passyth not without lyuerey of seson be made vpon the lande accordynge though a dede of fessemēt be therof made & delyuerid: but by way of surrendre partycion and eschaunge a freholde may passe without lyuerey.

¶Also if a man make a wyll of lande wherof he is seasyd in his demesne as of fee / that wyl is voyde/but if it had stande in fessees hādes it had ben good. And also in lōdon suche a wyll is good by the custome of the cytie if it be inrowlyd.

¶Also a lease for terme of yeres is but a chatell in the lawe/& therfore it may passe with-

out any kyuerey of season/ but other wyse it is of a state for terme of lyfe for that is a freehold in the lawe/ and therfore kyuerey muste be made therof.

¶ Also by the olde custome of the Realme a man maye dystreyne for a rent seruyce or cõmon right. And also for a rent reseruyd vpon a gyfte in tayle/ a lease terme of lyfe/ of yeres and at wyl/ and in suche case the lorde may distreyne the tenauntes beestes as soon as they come vpon the groũde/ but the beestes of straungers that come in but by maner of an escape/ he may not distreyne tyll they haue ben leuant and couchant vpon the grounde: but for dette vpon an obligacion nor vpon a cõtracte/ nor for accompte ne yet for arerages of accompte/ nor for no maner of trespasse/ reperacions/ nor suche other no man may distreyne.

¶ Also by the olde lawe & custome of the realme all yssues that shalbe ioyned in any courte of recorde within the Realme except a fe we/ wherof it nedyth not to treate at this tyme/ muste be tryed by .xii. free and lawfull men of the vysne that be not of affynytie to none of the partyes. And in other courtes that be not of recorde/ as in the countye/ courte baron/ hundred and suche other lyke/ they shalbe tryed by

the oth of the parties and not otherwyse onles the parties assent that it shalbe tryed by the homage. And it is to be notyd that barons and all pyers of the realme be exceptyd out of such tryallys if they wyll: but if they wyll wylfully be sworne therin / some say it is no ertoure. And they may if they wyl haue a wrytte out of the Chauncerye dyrectyd to the Shyryfe cōmaundynge hym that he shall not impanell theym vpon no enquest. And of this that is sayd byfore it apperith that the customes afore sayd nor other lyke vnto them / wherof be very many in the lawes of Englāde can not be prouyd only by reason: for how may it be prouyd by reason / that the eldest sone shall enheryte his father and the yonger to haue no parte or that the husbonde shall haue the hole lande for terme of his lyfe as tenaunt by the curtesie in suche maner as byfore apperyth. And that the wyfe shall haue onlye the thyrde parte in the name of her dower / and that the husbonde shall haue all the goodes of his wyfe as his owne. And that if he dye lyuynge the wyfe / that his executours shall haue the goodes and not the wyfe. All these and such other can not be prouyd only by reason that it shulde be so & no notherwyse all though they be reasonable

and that suffysyth in the lawe. And so a statute made agaynste suche generall customes ought to be obseruyd.

¶ Also the lawe of propretye is not the lawe of reason / but a lawe of custome howe be it that it is kepte and is also ryght necessarye to be kept in all realmes and amonge all people And so it muste be noumbred amonge the generall customes of the realme. And it is to be vnderstande that there is no statute that treatyth of the begynnynge of the sayd customes / ne why they shulde be holden for lawe. And therfore after them that be lernyd in the lawes of the realme / the olde custome of the realme is the only and sussycyent auctorytie to theym in that behalfe: but I pray the shewe me what doctours holde therin / that is to say whether a custome only be suffycyent auctorytie of any lawe. ¶ Doctour, doctours holde that a lawe groundyd vpon a custome is the most sueryst lawe / but this must be alwayes vnderstāde that suche a custome is nother contrarye to the lawe of reason / nor to the lawe of god. And nowe I praye the shewe me somwhat of the maxymes of the lawe of Englande wherof thou haste made mencyon byfore in the .iiii. chapitre. ¶ Student, I wyll with good wyll.

¶ Of the.iiii.ground of the lawe of Englande. The.viii.chapitre.

Student) the.iiii. ground of the lawe of Englande standyth in dyuerse prynciples that be callyd in the lawe maxymes / the whiche haue ben alwayes taken for lawe i this realme so that it is not lawful for non that is lernyd to denye theym / for euery one of those maxymes is suffycyent auctorytie to hym self. And whiche is a maxyme / and whiche not shall alway be determyned by the Juges / and not by.vii.men. And it nedith not to assygne any reason why they were fyrst receyued for maxymes for it suffysyth that they be not agaynst the lawe of reason nor the lawe of god / & that they haue alway be taken for lawe. And such maxymes be not only holden for lawe but also other cases lyke vnto theym / and all thynges that necessaryly foloweth vpon the same be to be reduced to lyke lawe. And therfore moste cõmenly there be assygned some reasõs or consyderacion why suche maxymes be resonable to the intent that other cases lyke maye

the more conuenyently be applyed to theym. And they be of the same strength and effecte in the lawe as statutes be/And though the generall custome of the realme be the strength & warraunte of the sayd maxymes as they be of the generall customes of the realme/yet by cause the sayd generall customes be in manet known thorugh the realme as well to them that be vnlerned as lerned/and maye lyghtly be had and knowen and that with lytell studye. And the sayd maxymes be onlye known in the kynges courtes or amongte them that take great studye in the lawe of the realme. Therfore they be sette in this writynge for seuerall groundes and he that lysteth may so accompt them/or if he wyll he may take theym for one grounde after his pleasure/of whiche maxymes I shall hereafter shewe the parte.

¶ Fyrst there is a maxyme that Escuage vncertayne maketh knyghtes seruyce.

¶ Also there is another maxyme that Escuage certeyne maketh socage.

¶ Also that he that holdyth by castell garde/holdyth by knyghtes seruyce/but he holdyth not by escuage/And that he that holdyth by .xx.s.to the garde of a castel holdith by socage.

¶ Also there is a maxyme that a dyscent ta/

kyth away an entre.

¶ Also that no prescrypcyon in landes ma-
kyth a ryght.

¶ Also that a prescripcyon of rent and of pro
fytes aprendre out of lande makyth a ryght.

¶ Also that the lympytacion of a prescripcyon
generally taken is from the tyme that no mã-
nes mynde renuyth to the contrarye.

¶ Also that assygnes may be made vpon lã-
des gyuen in fee for terme of lyfe / or for terme
of yeres though no mencyon be made of assyg
nes: & the same lawe is of a rent that is grañ-
tyd / but otherwyse it is of a warantye and of
a couenaunte.

¶ Also that a condycion to auoyde a freholde
can not be pleadyd without dede / but to auoy
de a gyfte of a chatell it may be pleadyd with
out dede.

¶ Also that a release or a cõfyrmacyon made
by hym that at the tyme of the release or con-
fyrmacion made had no ryght is voyde in the
lawe / though a ryght com to hym after except
it be with warantye / & then it shall barre hym
of all ryght that he shall haue after the war-
rauntye made.

¶ Also that a ryght or tytle of accion that on-
lye dependyth in accyon can not be gyuen nor

graũtyd to none other but only to the tenaũte of the grounde / or to hym that hath the reuer-cyon or remayndre of the same lande.

¶ Also that in an accyon of dette vpon a contracte the deff' may wage his lawe / but other wyse it is vpon a lease of landes for terme of yeres or at wyll.

¶ Also that if an exigent in case of felonye be awardyd agaynst a man: he hath therby forth with forfetyd his goodes to the kynge.

¶ Also if the sone be atteyntyd in the lyfe of the father and after he purchaseth his chartour of Pardon of the kynge / and after the father dyeth / In this case the lãde shall eschete to the lorde of the fee in so moche that though he haue a yonger brother / yet the lande shall nat dyscende to hym / for by the atteyndre of the elder brother the blode is corrupte and the father in the lawe dyeth without heyre.

¶ Also if an abbot or a pryour alyene the landes of his house and dyeth: in that case though his successoure haue ryght to the lande / yet he maye not entre / but he muste take his accyon that is appoyntyd hym by the lawe.

¶ Also there is a maxyme in the lawe that if a vyllayne purchase landes and the lorde entre / he shall enioy the lande as his owne / but

if the Vyllayne alyene byfore the lorde entre/ that alyenacyon is good/And the same la We is of goodes.

¶Also if a man stele goodes to the Value of. xii.d.or aboue it is felonye/and he shal dye for it/And if it be Vnder the Value of.xii.d.then it is but petyt larcynye and he shal not dye for it/but shall be other Wyse punysshed after the discrecyon of the Juges except it be taken fro the person/for if a man take any thynge ho We lytell so euer it be from a mānes persone felo/ nously it is callyd roberye & he shal dye for it.

¶Also he that is arcynyd Vpon an Indyte/ ment of felynye shall be admyttyd in fauoure of lyfe to chalenge.xxx V. Jurrours peremto ryly / but if he chalenge any aboue that nom/ bre the la We takyth hym as Won that hath re/ fused the la We bycause he hath refused thre ho le enquest;/and therfore he shall dye:but With cause he may chaleng as many as he hath cau se of chalēge to.And further fore it is to be Vn derstande that suche peremtorye chalenge shall not be admyttyd in appeale / bycause it is at the suyte of the partye.

¶Also the lande of euery man is in the la We enclosed from other thoughe it lye in the open felde.And therfore if a man do a tres pas ther

in the Wryt shall be quare clausum fregit.

¶ Also that rentes/cõmons of pasture of turbary reuercyons remayndres/ nor suche other thynges Whiche lye not in manuell occupacyon may not be gyuen nor graunted to none other Without Wrytynge.

¶ Also that he that recouereth dette or domages in the kynges courte by suche an accyon/ Wherein a Capias laye in the processe maye Within a yere after the recouere haue a Capias ad satisfaciendum to take the bodye of the defendaunte and to cõmyt hym to pryson tyll he haue payde the dette & domages: but if there laye no Capias in the fyrste accyon / then the playntyfe shall haue no Capias ad satisficiendum/but muste take a fieri facias or any elegit Within the yere / or a scire facias after the yere if he Wyll.

¶ Also if a release or confyrmacyon be made to hym / that at the tyme of the release made had no possession in the lande. &c. the release or confyrmacyon is Voyde except certayne cases as to a Vouchye and certayne other Whiche ne be not here to be remembred.

¶ Also there is a maxyme ī the lawe of Englande that the kynge may dissease no man/ne that no man may dyssease the kynge / ne pull

any reuercyon or remayndre out of hym.
¶ Also the kynges excellencye is so hyghe in the lawe that no freholde may be gruen to the kynge ne bedetyuyed from hym/but by mater of recorde.
¶ Also there was somtyme a maxyme and a lawe in englande that no man shulde haue a writ of tyght/but by speciall suyte to the kynge/ And for a fyne to be made in the Chaun/cery for it but tho maxymes be chaũged by the statute of magna carta the. chapitre/ where it is sayd thus. Nulli negabimus nulli vendemus rectum vel Justiciam. And by the sayd wordes nulli negabimus a man shall haue a writ of tyght of course in the Chaũcery with out suynge to the kyng for it. And by the wordes nulli vendemus: he shall haue it without fyne. And so many tymes the olde maxymes of the lawe be chaũged by statute.
¶ Also though it be resonable that for the manyfolde dyuersytyes of accyons that be in the lawes of Englande/that there shuld be dyuer sytyes of processe as in reale accions after one maner/ and in psonall accyons after an other maner/ yet it can not be prouyd merely by reason that the same processe ought to be had and none other/ for by statute it myght be alteryd.

And so the grounde of the sayd processes is to be referryd onlye to the maxymes and custo/ stomes of the realme. And I haue shewyd the these maxymes byfore rehercyd not to the in/ tent to shewe the specyally What is the cause of the lawe i them/ for that wold aske a great respyte/ but I haue shewyd them onlye to the intent that thou mayst perceyue that the sayde maxymes and other lyke may conuenyently be sette for one of the groũdes of the lawes of Englande/ moreouer there be dyuers cases/ Whereof I am in doute whether they be onlye maxymes of the lawe/ or that they be groun/ dyd vpon the lawe of reason/ Wherin I pray the sette me here thyne opynyon.

¶ Doctour) I pray the shewe those cases that thou meanest/ and I shall make the answers therin as I shall se cause.

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¶ Here after folowyth dyuers cases Wherin the Student doubtyth Whether they be onlye maxymes of the lawe/ or that they be groundyd vpon the lawe of reason. The.xv.chapitre.

Tudent) the lawe of englande is that if a man cõmaũde another to do a tresspasse & he dothe it / that the cõmaũdour is a tresspasser And I am in doute whether that be only by a mayne of the lawe / or that it be by the lawe of treason.

¶ Also I am in doute vpon what lawe it is groundyd that the Accessory shall not be put to answere byfore the pryncypall. &c.

¶ Also the lawe is that if an Abbot bye a thynge that cõmyth to the vse of the howse & dyeth that his successours shalbe chargyd: and I am somwhat in doute vpon what groũde that lawe dependyth.

¶ Also that he that hathe possessyon of lande thoughe it be by disseason hath rygh̄t agaynst all men / but agaynst hym that hath rygh̄t.

¶ Also that if an accion reall be sued agaynst any man that hath nothynge in the thynge demaunded the Wryt shall abate.

¶ Also that the alyenacion of the tenaunt nor his entre in to relygion / or if he be made a knyghte / or if she be a woman & take an husbõde hãgige the Wryt: that the Wryt shal not abate.

¶Also if lande and rent that is goyng out of the same lande come in to one mannes hande of lyke estate and lyke suertye of tytle / the rent is extyncte.

¶Also if lãde descende to hym that hath right to the same lande byfore: he shalbe remytted to his better tytle if he wyll.

¶Also if two tytles be concurrant togyther / the eldest tytle shalbe preferryd.

¶Also that euery man is bounde to make recompence for suche hurte as his beestes shall do in the corne or grasse of his neyghbour thoughe he knowe not that they were there.

Also if the demaundaunt or playntyffe hangynge his wryt wyll entre in to the thynge demaundyd his wryt shall abate. And it is many tymes very harde and of great difficultie to knowe what cases of the lawe of Englãd be groũdyd vpon the lawe of reason / & what vpon the custome of the realme: and though it be harde to discusse / yet it is very necessary to be knowen for the knowlege and parfyte reason of the lawe / and if any man thynke that these cases byfore rehercyd be groundyd vpon the lawe of reason / then he may referre therm to the fyrste grounde of the lawe of Englãde Whiche is the lawe of reason / wherof is made

mencyon in the.v.chapitre. And if any man thynke that they be groundyd vpon the lawe of custome: then he may referre them to the mayms of the lawe / Which be assygned for the thyrde groūde of the lawe of Englande: Wher of mencyon is made in the.viii.chapitre as by fore appertyth. ¶ Doctoure) but I pray the shewe me by what auctorytye is it prouyd in the lawes of Englande that the cases that thou haste put byfore / and suche other Whiche thou callest mayms ought not to be denyed / but ought to be taken as mayms / for syth they can not be prouyd by reason as thou agreest thy self they can not: they may as lightly be denyed as affermyd onles there be some suffycyent auctorytie to approue theym. ¶ Student) many of the customes and mayms of the lawes of Englande be knowen by the vse and custome of the realme so apparantly that it nedyth not to haue any lawe wrytten therof for what nedyth it to haue any lawe wrytten that the eldest sonne shall enheryt his father or that all the doughters shall enheryte togyther as one heyre if ther be no sonne / or that the husbonde shall haue the goodes and chatelys of his wyfe that she hath at the tyme of the spousellys or after / or that a bastarde shall not en-

heryt as heyre or that executours shal haue the
disposycyon of all the goodes of theyre testa=
toure/and if there be no executours that the or
dynarye shall haue it/ and that the heyre shall
not medle with the good= of his auncestre: but
any partyculer custome helpe hym. The other
maxymes and customes of the lawe that be
not so openly knowen amõgst the people may
be knowen partly by the lawe of reason: and
partely by the bokes of the lawes of Englan
de called yeres of termes/ and partely by dy=
uers recordes remaynynge in the kynges cour
tes/and in his tresorye. And by a boke that is
called the regestre/ and also by dyuers statut=
wherin many of the sayd customes and max=
ymes be ofte resyted/ as to a dylygent sercher
Wyll euydently appere.

Of the. B. grounde of the lawe of Englande. The. x. chapitre.

STudent) The. B. grounde of
the lawe of Englande stan=
dyth in dyuers partyculer cu=
stomes vsed in dyuers coun=
tres/townes/cytes/and lord=
shyppes in this realme/ the whiche partyculer

cuſtomes bycauſe they be not agaynſte the lawe of reaſon/nor the lawe of god / though they be agaynſt the ſayde generall cuſtomes or maxymes of the lawe: yet neuertheles they ſtande in effecte and be taken for lawe/but if it ryſe in queſtyon in the kynges courte/ whether there be any ſuche partyculer cuſtome or not/it ſhalbe tryed by.xii.men/and not by the Juges/except the ſame partyculer cuſtome be of recorde in the ſame courte. Of whiche particulet cuſtomes / I haue hereafter noted ſome for an enſample.

¶ Fyrſte there is a cuſtom in Kent that is calyd gauelkynde / that all the bretherne ſhall enheryt togyther as ſuſters at the cõmon lawe

¶ Alſo there is another ptyculer cuſtom that is callyd burghenglyſſhe / where the yonger ſone ſhall enheryte byfore the eldeſt / and that cuſtome is in notyngham.

¶ Alſo there is a cuſtom in the cytie of Lõdon that fre mẽ there may by theyr teſtamẽt inrouled byqueth theyr landes that they be ſeaſyd of to whom they wyll/except to mortmayne. And if they be cytyzyens & fre men/then they may alſo byqueth landes to mortmayne.

¶ Alſo i gauelkynde though the father be hãgyd the ſone ſhall enheryt/for theyr cuſtome is

the father to the bough / the sone to the plough.
¶ Also in some countres the wyfe shall haue the halfe of her husbondes landes in the name of her dowrye as longe as she kyueth sole.
¶ Also in some coũtrey the husbonde shall haue the halfe of the enherytaunce of his wyfe / thoughe he haue no yssue by her.
¶ Also in some countrey an infaunte when he is of the age of .xv. yere may make a fessement: & the fessement good. And in some coũtrey when he can mete an elle of clothe.

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¶ Of the sypt grounde of the lawe of Englande. The .xi. chapitre.

STudent) The .vi. grounde of the lawe of Englande stãdyth in dyuers statutes made by our soueraygne lorde the kyng and his progenytours / & by the lordes spyrytuell & temporal / and the cõmons of the hole realme in dyuers Parlyamentꝭ in suche cases where the lawe of reason / the lawe of god / customes / maxymes / ne other groundes of the lawe semyd not to be suffycyent to punysshe euyll men / & to rewarde good men.

And I remembre not that I haue sene any other groundes of the lawe of Englande: but onlye these that I haue byfore remembred. Furthermore it appertyth of that I haue sayd byfore that oft tymes two or thre groundes of the lawe of Englande muste be ioyned togyther/ or the playntiffe can open and declare his ryght/ as it may appere by this example. If a man entre in to another mannes lande by force/ & after makyth a feffement for mayntenaunce to defraude the playntyffe from his accyon. In this case it appertyth that the sayd vnlawfull entre is prohybit by the lawe of reason/ but that the playntyffe shall recouer treble damages that is by reason of the Statute made in the. viii. yere of kynge Henry the. vi. the. ix. chapitre. And that the damages shalbe sessyd by. xii. men that is by the custome of the realme. And so in this case thre groundes of the lawe of Englande mayntene the playntyffes accyon. And so it is in dyuers other cases that nede not to be remembred nowe. And thus I make an ende for this tyme to speke any ferther of the groundes of the lawe of Englande.

¶ Doctour) I thanke the for the great payne that thou hast taken therin/ neuertheles for as moche as it appertyth by that thou haste sayde

byfore that the lernyd men of the lawe of Englande pretende / to verifye that the lawe of Englande wyll nothynge do / ne attempte agaynst the lawe of reason / nor the lawe of god / I praye the answere me to some questyons groundyd vpon the lawe of Englande / howe the lawe may stande with reason or cõscyence in them. ¶ Student) put the cases & I shall make answere therin as well as I can.

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¶ The fyrste questyon of the Doctour / of the lawe of Englande and cõscyence. The .vii. chapitre.

Doctour) I haue harde saye that if a man that is bounde in an oblygacion pay the money / but he taketh no acquytaũce or if he take one & it happenyth hym to lese it / that in that case he shalbe compellyd by the lawes of Englande to pay the money agayne / & howe may it be sayde then / that that lawe standyth with reason or cõscyence: for as it is groũdyd vpon the lawe of reason that dettes ought of

tyght to be payde/ so it is groundyd vpon the lawe of reason/ as me sempth that When they be payde he that payeth them shuld be dyschargyd. ¶ Student) Fyrste thou must vnderstãde that it is not the lawe of Englande/ that if a man that is bounde in an oblygacyon paye the money without acquytaunce/ or if he take acquytaunce and lese it: that therfore the lawe determyneth that he ought to paye the money eftesones/ for that lawe were bothe agaynst reason & conscyence/ but trouth it is that there is a generall maxyme in the lawe of Englãde/ that in an accion of dette sucd vpon an oblygacion/ the defendaunte shal not plede that he oweth not the money/ ne can in no wyse dischargye hym selfe in that accyon/ but he haue acquytaunce or some other Wrytynge suffycyent in the lawe or some other thyng lyke/ Wytnessynge that he hathe payde the money/ and that is ordayned by the lawe to auoyde a grete incouenyence that elis myght happen to come to many people/ that is to say that euery man by a nude parol and by a bare auctmẽt shuld auoyde an oblygacyon/ Wherfore to auoyde that inconuenyence the lawe hathe ordayned that as the defendaunte is chargyd by a suffycyent Wrytynge/ that so he muste be dyschar-

gyd by ſuffycyent wrytynge: or by ſome other thynge of as hygh auctorytie as the obligacyon is. And though it maye folowe therupon that in ſome partyculer caſe a man by occaſyon of that generall maxyme may be compelled to pay the money agayn/that he payde by fore: yet neuertheles no defaute can be therfore aſſygned in the lawe/ For lyke as makers of lawes take hede to ſuche thynges as may ofte falle/ and do moſte hurte amongſt the people rather then to partyculer caſes: ſo in lyke wyſe the generall groundes of the lawe of Englande hede more/ What is good for many then what is good for one ſynguler perſone/ And bycauſe it ſhuld be a hurte to many if an obligacyon ſhulde be ſo lyghtly auoyded onlye by worde. Therfore the lawe ſpecyally preuenteyth that hurte Vnder ſuche maner as byfore apperyth/ And yet intendyth not/ nor commaũdyth not that the money of ryght ought to be payde agayn/but ſettyth a generall rule whiche is good and neceſſary to all the people and that euery man maye well kepe without it be thorugh his owne defaute/and if ſuche defaute happen in any perſone/ wherby he is without remedye at the cõmon lawe/ yet he may be holpen by a ſub pena/ and ſo he maye

in many other cases where conscyence seruyth for hym / that were to longe to reherce nowe. ¶ Doctoure) but I pray the shewe me vnder what maner a man may be holpen by conscyence. And whether he shalbe holpen i the same courte or in an other. ¶ Student) bycause it can not be well declaryd where a man shalbe holpen by conscyence and where not: but it be fyrste knowen what conscyence is: therfore by cause it parteynyth to the moste proprelye / to treate of the nature and qualytye of conscyence / therfore I praye the that thou wylte make me some bryef declaracyon of the nature and qualytye of conscyence. And then I shall answere to thy questyon as well as I can.

¶ Doctoure) I wyll with good wyll do as thou sayst / and that thou mayst the better vnderstande that I shall saye of conscyence / I shall fyrste shewe the what sinderesis is / and then what reason is / and then what conscyence is / And howe these thre dyffer amōge themselfe I shall somwhat touche.

¶ What sinderesis is.
The.xiii.chapitre.

Doctoure) Sinderesis is a natu-
rall power of the soule / & is euer
in the hyghest parte therof / mo-
uynge and sterrynge it to good /
and abhorrynge euyll. And ther-
fore sinderesis neuer synneth nor erryth. And
this sinderesis our Lorde put in man to the in-
tent that the ordre of thynges shuld be obseruyd
For after seynt Deonyse the Wysdom of god
Joyneth the bygynnynge of the seconde thyn
ges to the last of the fyrste thynges / for Aun-
gell is of a nature to vnderstãde Without serch
chynge of reason: & to that nature man is Joy
ned by sinderesis / the Whiche sinderesis maye
not hollye be extyncted neyther in man ne yet
in dampned soules: But neuertheles as to the
Vse and exercysyse therof / it may be lette for a
tyme eyther throughe the darkenesse of ygno-
raũce / or for vndyscrete delectacion / or for the
hardnes of obstynacye / fyrste by the darkenes
of ygnoraunce sinderesis maye be lette that it
shall not murmure agaynst euyll bycause he
byleuyth euyll to be good / as it is in herytyks
the Which When they dye for the Wykednes of
theyr errour byleue that they dye for the Verye
trouth of the fayth. And by vndiscrete delecta
cyon / sinderesis is somtyme so ouerlayde that

remorce or grudge of conscyence / for the tyme can haue no place. For the hardnes of obstyna cye sinderesis is also let / that it may not styre to goodnes as it is in dampned soules that be so obstynate in cuyll / that they maye neuer be enclyned to good. And so thoughe sinderesis may be sayd to that poynt eptyncte in damp= ned soules: yet it may not be sayd that it is ful ly eptyncte to all intents / for they alway mut mure agaynst the cuyll of the payne that they suffer for synne. And so it maye not be sayde that it is vnyuersally / and to all intents and to all tymes eptyncte. And this sinderesis is the begynnynge of all thynges that maye be lernyd by speculacyon or studye. And myny= stryth the generall grounde and pryncyples therof. And also of all thynges that are to be done by man an example of suche thynges as may be lernyd by speculacyon apperyth thus: sinderesis sayth that euery hole thynge is mo= re then any one parte of the same thyng. And an example of thyngesthat are to be done / or not to be done / is where synderesis sayth no cuyll is to be done / but that goodnes is to be done and folowyd and suche other. And ther= fore sinderesis is callyd by some men the la we of reason / for it mynysteryth the pryncyples of

the lawe of reason/the whiche be in euery mā by nature in that he is a resonable creature.

¶Of reason. The.xiiii.chapitre.

Doctoure) Whan the fyrste man Adam was create/he receyued of god a double eye that is to saye an outwarde eye. Wherby he myght se visible thynges/and knowe his bodely enemyes and eschewe them. And an inwarde eye/that is the eye of reason/Wherby he myghte se his spyrytuell ennemyes that fyghtyth agaynst his soule & bewarre of them. And amonge al gyftes that god gaue to man/this gyfte of reason is the moste noblest/for therby man precellyth all bestes/and is made lyke to the dygnytie of aungellys/dyscernynge trouth from falshede/and cuyll from good Wherfore he gothe farre from that effecte that he was made to whē he taketh no hede to the trouth/or when he p̄ferryth cuyll byfore good. And therfore after Doctoures reason is that power of the soule/that dyscernyth bytwene good and cuyl/and bytwene good and better comparynge the one to the other: the whiche al

so che wsyth vertues/louyth god / and flyeth vyces. And reason is callyd ryght wyse and good/for it is conformable to the wyll of god and the fyrste thynges the fyrst rewle that all thynges must be ruckyd by/is the wyll of god and reason that is not ryght wyse nor strayte: but that is sayde culpable is other bycause she Jugyth when she is deceyuyd with an errour that myght be ouercome/or elis thurgh her pryde or slouthfulnes she enqryth not for knowlege of the trouth that ought to be enquerryd. Also reason is deuyded in to two ptes/that is to say in to the hygher parte/and in the lower parte. The hygher parte hedyth heuenly thynges and eternall. And reasonyth by heuenly lawes/or by heuēly reasōs What is to be done and What not to be done. And What thynges god cōmaundyth / and What he prohybyteth. And this hygher parte of reason hath no regarde to transytorye thynges/or temporall thynges: but that somtyme as it were by maner of coūcell she bryngeth forthe heuenly reasons to ordre well temporall thynges. The lower parte of reason workyth most to gouerne wel temporall thynges. And she groūdyth her reasons moche vpon lawes of man/& vpon reason of man / wherby she concludyth that is to

be done: that is honest and eppedyent to the cō mon welth/or not to be done / for it is not ep= pedyent to the cōmon welth. And so that rea= son wherby I knowe god / and suche thyngs as perteyne to god / bylongeth to the hyghest parte of reason. And that reason wherby I knowe creatures bylōgyth to the lower parte of reason. And though these two partes / that is to say the hyghet parte and the lower parte be won in dede and essence / yet they dyffer by reason of theyr worckynge and of theyr offyce as it is of one selfe ye: that somtyme lokyth vpwarde / and somtyme downewarde.

¶ Of conscyence. The.xv. chapitre.

Doctoure) This worde conscyence whi che in latey is callyd conscientia is com pownyd of this ꝓposicion: cum / that is to say in englysshe: with / & with this nowne scientia / that is to say in englysshe knowlege & so cōscyence is as moche to say as a know= lege with another thynge / and conscyence so takey is nothing els but an applyeng of any scyence or knowlege to some partyculer acte of man. And so conscyence may somtyme erre and somtyme not erre. And of cōscyence thus

taken Doctours make many dyscrypcyons/ Wherof Won doctour sayth that conscyence is the lawe of oure Vnderstandynge. Another that cõscyence is an habyte of the mynde discernynge byt Wyxt good and euyl. Another that conscyence is the Jugemẽt of reason Jugynge on the partyculer actes of man/all Whiche sayinges agre in Won effecte / that is to saye that conscyence is an actuell applyeng of any cunnynge or knowlege to suche thynges as be done/ Wherupon it folowseth that Vpon the moste parfyte knowlege of any lawe or cunnynge. And of the moste parfyte (moste straynte applyeng of the same/to any ptyculer acte: of man folowseth the most perfyte the most pure and the moste beste conscyence. And if there be defaute in knowynge of the trouth of suche a lawe/ or in the applyeng of the same to any partyculer acte then therupon folowseth an errour/or defaute in conscyence/ as it may appere by this example / Hinderesis mynysteryth a Vnyuersall prynciple that neuer errȳth/that is to say that an Vnlaufull thyng is not to be done. And then it might be taken by some mã that euery other is Vnlawfull bycause our lorde sayth Math. v. ye shall in no Wyse sWere. And yet he that by reason of the sayd Wordes

wyll holde that is not lawfull in no case/ to swere erryth in conscyence / for he hath not the parfyte knowlege and vnderstādynge of the trouth of the sayd gospell/ nor he reducyth not that sayeng of scrypture/ to other scriptures: in whiche it is graunted that in some case an oth may be lawfull/ and the cause why cōscyence may so erre in the sayd case / and in other lyke is bycause cōscyence is formyd of a certayne ꝑtyculer ꝓposicion or questyon groūdyd vpon vnyuersall rewles ordayned for suche thynges as are to be done. And bycause a partyculer ꝓposicion is not knowen of hym selfe/ but must appere and be serchyd by a dylygent serche of reason/ therfore in that serche and in the cōscyence that shuld be formyd therupon may happen to be errour / and therupon it is sayde that there is errour in cōscyence/ whiche errour cōmyth eyther bycause he dothe not assent to that he ought to assēt vnto: or els bycause his reason wherby he doth referre one thynge to another is dysceyued: for further declaracyon wherof it is to vnderstande that errour in cōscyence cōmeth. vii. maner of wayes. Fyrst is thorugh ignoraunce/ and that is when a man knoweth not what he ought to do/ and what he ought not to do. And then he ought to aske

counceyll of them that he thynkyth moste ex/
pert in that scyence Whetupon his doute ryseth
And if he can haue no coũceyll/then he muste
hollye cõmyt hym to god. And he of his good
nes Wyll so ordre hym/that he Wyll saue hym
from offence. The seconde is thorugh neclygẽ
ce/as When a man is neclygent to serche his
owne conscyence/or to enquere the treWth of
other. The thyrde is thorugh pryde/as When
he Wyll not meklyn hym selfe ne byleue them
that be better and Wyser then he is. The.iiii.is
thrugh syngularytie as When a mã folo Weth
his owne Wyt/and Wyll not conferme hym
self to other nor folo We the good cõmon Way
es of good men. The fyfte is thorughe an in/
ordynat affeccion to hym selfe/Wherby he ma
kyth conscyence to folo We his desyre/and so
he causyth her to go out of her ryght course.
The syxt is thorugh pusillanymytie Wherby
some persone dredeth ofte tymes suche thyngs
as of reason he ought not to drede. The. Vii.is
thorugh perplexitie/and that is When a man
bylcueth hym selfe to be so sette byt Wyxt tWo
synnes that he thynkyth it Vnpossyble/but he
shall falle in to the one/but a man can neuer
be so proplexid in dede/but thorugh an errour
in conscyence/and if he Wyll put a Waye that

errour he shall be delyueryd. Therfore I pray the that thou wylt alwayes haue a good con/scyence & if thou haue so / thou shalt alwayes be mery / & if thyn owne herte reproue the not thou shalt alwayes haue in warde peace. The gladnes of right wysemen is of god & in god/ & theyr Joy is alwayes in trouth & goodnes. There be many dyuersyties of cōscyence / but there is none better then that wherby a man trewely knoweth hym self: many men know many great hygh and cūnynge thynges / and yet knowe not theym selfe / and he that kno/weth not hym selfe knoweth no thynge wele. Also he hath a good & a clene conscyence / that hath purytie and clēnes in his herte / trouth in his worde / & ryght wysenes ī his dede. And as a lyght is sette in a lanterne that all that is in the house may be sene therby: so almyghty god hath sette conscyence in the myddes of euery re sonable soule as a lyght wherby he may discer ne and know what he ought to do: and what he ought not to do. Therfore for as moche as it behouyth the to be occupyed in suche thyngꝫ as ꝑteyne to the lawe / It is necessarye that thou euer holde a pure and a clene cōscyence specyal ly in suche thyngꝫ as concerne restytucyon for the synne is not forgyuen / but the thynge that

is wrongfully taken away be restoryd. And I coũceyll the also that thou loue that is good and flee that is euyll/ and that thou do to another as thou woldest shuld be done to the/and that thou do nothynge that thou woldest not that shuld be doyn to the. That thou do nothynge agaynst trouth / that thou lyue peaseablye with thy neyghboure/and that thou do Justyce to euery man as moche as in the is. And also that in euery generall rule of the lawe thou do obserue & kepe equytie/ and if thou do thus I truste the lyght of thy lanterne / that is thy cõscyence shall neuer be extynctid. ¶ Studẽt) but I pray the shewe me what is that equytie that thou hast spoken of byfore/and that thou woldest that I shuld kepe. ¶ Doctour) I wyll with good wyll shewe the somwhat therin.

¶ What is equytye. The.xxvi.chapitre.

Doctour) Equytye is a rygh-
wysenes that cõsyderyth all the
partyculer circumstaunce therto
necessarye/the whiche also is tẽ-
peryd with the swetnes of mer-
cye. And suche an equytye must alway be ob-
seruyd in euery lawe of man/ and in euery ge-

nerall rewle therof / and that knewe he well that sayde thus. Lawes couet to be rewlyd by equytye. And the wyse man sayth: be not ouer moche ryght wyse for the extreme ryght wyse/ nes is extreme wronge/ as who sayth if thou take all that the wordes of the lawe gyueth the thou shalt somtyme do agaynst the lawe. And for the playner declaracyon what equy/ tye is thou shalt vnderstande/ that syth the de des and actes of man / for whiche lawes ben ordayned happen in dyuers maners infynyt/ lye. It is not possyble to make any generall rewle of the lawe / but that it shall fayle in some case. And therfore makers of lawes take hede to suche thynges as may often come and not to euery pticuler case / for they coulde not thoughe they wolde. And therfore to folowe the wordis of the lawe/ were in some case both agaynst Justyce and the cõmon welth: wher/ fore i some cases it is necessary to leue the wor des of the lawe / & to folowe that reason and Justyce requyreth/ and to that intent equytie is ordayned/ that is to say to tempre and myt/ tygate the rygoure of the lawe. And it is cal/ lyd also by some men epicaia. The whiche is no other thynge but an excepcyon of the lawe of god/ or of the lawe of reason/ from the gene

rall rewles of the lawe of man: when they by reason of theyr generalytye wolde in any partyculer case Juge agaynst the lawe of god/or the lawe of reason/ the whiche excepcion is secretely vnderstāde in euery generall rewle of euery posytyue lawe. And so it apperyth that equytie takyth not away the very ryght / but only that that semyth to be ryght by the generall wordꝫ of the lawe/nor it is not ordayned agaynst the cruelnes of the lawe for the lawe in suche case generallye taken is good in hym selfe/but equytye foloweth the lawe in al partycaler cases where ryght and Justyce requyreth / notwithstandynge a generall rewle of the lawe be to the cōtrary. And then he leuyth ⁊ forsakyth the Jugement of the lawe/ wherfore it apperyth that if any lawe were made by man without any suche excepcyon expressyd or implyed it were manyfestly vnresonable/and were not to be sufferyd / for suche cases myght come that he that wolde obserue that lawe shuld breke both the lawe of god/⁊ the lawe of reason. As if a man make auowe that he wyl neuer eate whyte meate: ⁊ after it happenyth hym to com there where he can get none other mete: In this case it behouyth hym rather to breke his auowe then to dye for that

particuler case is exceptyd secretly from his ge
nerall auowe by this equytye or epykay as is
sayd byfore. Also if a lawe were made in a cy
tye that no mā vnder the payne of deth shuld
open the gates of the cytye byfore the sonne ry
synge/yet if the cytyzens byfore that houre fle
ynge from theyr enemyes come to the gates of
the cytye/and won for sauyng of the cytyzens
openyth the gates byfore the houre appoyntyd
by the lawe: yet he offendyth not the lawe: for
that case is exceptyd from the sayde generall
lawe by equytye as is sayde byfore / and so it
apperyth that equytie rather foloweth the in-
tent of the lawe/ then the wordes of the lawe
And I suppose that there be in lykewyse som
lyke equyties groundyd vpon the generall ru
les of the lawe of the realme. ¶ Student) ye
veryly wherof won is this. There is a gene-
rall prohibycion in the lawes of Englande/
that it shall not be lawfull to no man to en-
tre the freholde of another without auctorytie
of the owner or of the lawe/but yet it is exce-
ptyd from the sayde prohibycion by the lawe
of reason: that if a man dryue bestes by the hy-
ghe way & the bestes happen to escape in to the
corne of his neyghbour/ And he to bryng out
his bestes that they shuld do no more hurte the

re:he shall Justyfye that entre in to the grounde by the lawe. Also notwithstādynge the statute of Edwarde the thyrde made the.xxiii.yere of his reygn/wherby it is ordayned that no man vpon payne of imprysonemēt shuld gyue any almes to any valyant begger/that is well able to laboure: yet if a man mete with suche a valyant begger in so colde a wether & so lyght apparell/that if he haue no clothes he shal not be able to com to no town to haue succoure/but is lykely rather to dye by the way/& he therfore gyueth hym apparell to saue his lyfe he shalbe excused of the sayd statute by such an exception of the lawe of reason as I haue spoken of. ¶ Doctour) I knowe well that he shalbe excepted of the sayd statute by cōscyence/and ouer that haue great rewarde of god/for his good dede/but I wolde wyt whether the partie shalbe discharged i the cōmon lawe by suche an excepcion of the lawe of reason or not/for thoughe ygnoraunce inuyncyble of a statute excuse the partye agaynst god/yet as I haue herde it excusyth not in the lawes of the realme/ne yet in the Chauncerye as some say all though the partye to whom the forfayture is gyuen may not with cōscyence kepe it. ¶ Student) Veryly by thy question thou hast

put me ī a gteat doute: Wherfore I pray the gyue me a respyte therin to make the an answere but as I suppose for the tyme howbeit I wyl not fullye affirme it that he shuld wele plede it for his discharge at the cōmon lawe: bycause it shalbe taken that it was the ītent of the makers of the statute to excepte suche cases. And the Juges maye many tymes Juge after the mynde of the makers as fat as the lettre may suffre. And dyuers other excepciōs there be also from other generall groūdes of the lawe of the realme by such equyties as thou hast remēbred byfore that were to lōge to reherce nowe. ¶ Doctoure) but yet I pray the to shewe me shortly some parte of thy mynde Vnder what maner a man may be holpen ī this realme by suche equytie if he maye not be holpen in the same courte. ¶ Student) I wyll with good wyll shewe the some what therin.

¶ In what maner a man shalbe holpen by equyties in the lawes of Englande. The.xvii.chapitre.

Tudent) Fyrste it is to be vnderstande / there be dyuers excepcyons from the generall groundes of the lawe of the Realme / by other reasonable groundes of the same lawe / wherby a man shall be holpen in the cōmon lawe / as it is of this generall grounde that is not lawfull for no man to entre vpon a dyscent / yet the resonablenes of the lawe exceptyth from that grounde an infaunte that hath right and hath sufferryd suche a dyscent / and hym also that makyth contynuell clayme / and sufferryth them to entre / notwithstandynge the dyscent. And of that excepcyon they shall haue auaūtage in the cōmon lawe / ⁊ so it is the statute wherby it is prohybit / that certayne partyculer tenauntes shall do no waste / yet if a lesse for terme of yeres be made to an enfaūte that is within yeres of dyscrescyon / as of the age of. vi. or. vii. yeres: ⁊ a straūger do waste ī this case: this enfaunte shall not be punysshed for the waste / for he is exceptyd ⁊ excused by the lawe of reason. And a woman couerte to whom suche a lesse is made after the couerture shall be also dischargyd of waste by a resona-

ble mayme and custome of the realme/ And for reparacyons to be made vpon the same grounde/it is lawfull for suche partyculer tenauntes to cut downe trees to make reperacyons. And the cause there as I suppose is for that the mynde of the makers of the sayd estatute shalbe taken to be that that case shulde be excepted. And in all these cases the ptyes shal be holpen in the same courte. And thus apperyth that somtyme a man maye be excepted from the punysshemēt of a statut by the lawe of reason somtyme by a mayme of the lawe & somtyme by the intent of the makers of the statute. And it apperyth also that a man somtyme may plede the sayd materes & excepcions at the cōmon lawe: but yet it is to vnderstande that moste cōmonlye where any thynge is excepted from the generall customes or mayymes of the lawes of the realme/ by the lawe of god/ or by the lawe of reasō: the ptie must ther haue his remedye by a writte that is callyd a sub pena: If a sub pena lye in the case/ & if no sub pena lye in the case/ then he is boūde in cōference to reforme it: but where a sub pena lyeth/ and where not it is not owre entent to treate of at this tyme. And in some case there is no remedye for suche an equytye by way of cō

pulsyon / but all the remedye therin muste be commytted to the conscyence of the partye.
¶ Doctoure) but in case where a sub pena lyeth to whom shall it be dyrectyd: whether to the Juge or to the partie. ¶ Student) It shall neuer be dyrectyd to the Juge / but to the partye pleyntyffe / or to his attorney cõmaundynge them by the same vnder a certayn payne therin to be contayned that he procede no ferther at the cõmon lawe / tyll it be determyned in the kynges Chauncerye / whether the pleyntyffe hath tytle in conscyence to recouer or not. And whan the pleyntyffe by reason of suche an iniunccion ceasyth to aske any ferther pcesse: the Juges wyll in lyke wyse cease to make any ferther processe in that behalfe. ¶ Doctoute) is there any mencion made in the lawes of Englande of any suche equytyes. ¶ Student) of this terme / equytie to that itent that it is spokē of here / there is no mēcyon made in the lawes of Englãde / but of an equytye dyrryuyed vpõ certayne statutes mencyon is made many tymes in the lawe of Englande / but that equytye is all of an other effecte then this is / but of the effecte of this equytye / that we now speke of mencyon is made many tymes / for it is oft tymes argued in the lawe of Englande whe/

te a sub pena lyeth: and where not & dayly byl
les be made by men lernyd in the lawe of the
realme to haue sub penas. And it is not prohy
byt by the lawes of Englande / but that they
may wel do it so that they make them not: but
in case where they ought to be made / & not for
vexacion of the ptie: but accordig to the trouth
of the mater. And the lawe wyll ī many cases
that there shalbe suche remedye in the chaūcery
vpō dyuers thyngs groūdyd vpon suche equy
tyes. And then the lorde Chaunceller must or
der his conscyence after the rewles and groun
des of the lawe of the realme: in so moche that
it had not ben moche inconuenyent to haue as
sygned such remedy in the Chauncerye for the
vii. grounde of the lawe of Englāde / but for
as mche as no recorde remayneth in the kyngs
courts of no suche byll ne of the wryt of sub pe
na that is suyd therupō: therfore it is not set as
a speciall groūde of the lawe / but as a thynge
that is suffred by the lawe. ¶ Doctoure) then
syth the partyes ought of ryght in many cases
to be holpen in the Chaūcery vpon such equy
ties. It semyth that if it were ordayned by sta
tute / that there shuld be no remedye vpon su
che equytyes in the chauncerye / nor in none o
ther place / but that euery mater shuld be orde

ryd only by the rewles and groūdes of the cō-
mon lawe/ that that statut were agaīst right
& cōscyence. ¶ Student) I thynke the same/
but I suppose there is no suche statute. ¶ Doc
toure) there is a statute of that effecte as I ha-
ue herde say wherin I wolde gladly here thy
oppynyon. ¶ Student) shewe me what statu
te thou meanest/ and I shall with good wyll
say as me thynketh therin.

¶ Whether the statute hereafter rehereyd
by the Doctoure be agaynst conscy-
ence or not. The.xviii.chapitre.

Doctoure) There is a statute
made in the.iiii.yere of kyng
Henry the.iiii.the.xxii.chapi
tre/ that Jugementes gyuen
in the kynges courtes/ shall
not be examyned in the chaū
cerye/ Perlyament/ nor els where/ by whiche
statute it apperyth that if any Jugemēt be gy
uen in the kynges courtes agaynst an equyte/
or agaynst any mater of conscience/ that there
can be had no remedye by that equytye/ for the
Jugement can not be reformyd without exa
mynacion/ & the examynacion is by the sayde

ſtatute prohybyt / Wherfore it ſemyth that the ſayd ſtatute is agaynſt cõſcyence / What is thy oppynyon therin. ¶ Student) if Jugementꝭ gyuen in the kynges courtes ſhuld be examynꝭ ned in the chauncerye byfore the kynges counꝭ ceyll or in any other place / the playntyffꝭ or demaũdauntꝭ ſhuld ſeldom come to the effecte of theyr ſute / ne the lawe ſhuld neuer haue ende. And therfore to eſchew that icõuenyence that ſtatut was made. And though peraũture by reaſon of that ſtatute / ſome ſynguler perſone maye happen to haue loſſe. Neuertheleſſe the ſayd ſtatute is very neceſſary to eſchewe maꝭ ny great vexacyons / & vniuſt expences that wolde els come to many playntyffes that haꝭ ue tyght wyſely recouerȳd in the kynges courꝭ tes. And it is moche more prouyded for in the lawe of englãde that hurte nor damagꝭ ſhuld not come to many then to won. And alſo the ſayd ſtatute doth not phybyt equytye / but proꝭ hybyteth only the examynacyon of the Jugeꝭ ment / for the eſchewynge of the incõuenyence byfore rehercyd. And ſo it ſemyth that the ſaid ſtatute ſtandyth with good cõſcyence. And in many other caſes where a man doth wronge / yet he ſhall not be compellyd by way of comꝭ pulſyon to reforme it / for many tymes it muſt

be lefte to the cōscyence of the partye / whether he wyll redresse it or not. And in suche case he is as well bounde to redresse it if he wyl saue his soule / as he were if he were compellable therto by the lawe as it may appere in dyuers cases that may be put vpon the same. ¶ Doctour) I pray the put some of those cases for an example. ¶ Student) if the defendaunt wage his lawe in an accion of det brought vpon a trewe dette the pleyntiffe hath no meanes to come to his dette by way of compulsyon / and yet the defendaunt is bounde in conscyence to pay hym. Also if the graunde Jure afferme a false verdyt gyuen by the petye Jurye / there is no further remedye but the cōscyence of the ꝑtye. Also where there can be had no sufficiēt prouffe / there can be no remedye in the chauncerye / no more then there may be in the spirituell courte. And bycause thou hast gyuen an occasyon to speke of conscyence / I wolde gladly here thy oppynyon where conscyence shalbe rewlyd after the lawe / & where the lawe shalbe rewlyd after conscyence. ¶ Doctour) And of that mater I wolde lykewyse gladly here thy oppynyon specyallye / in cases groundyd vpon the lawes of Englaude: for I haue herde but lytell therof in tyme paste / but byfore

thou put any caſes therof / I wolde that thou ſhe
woldeſt ſhewe me howe thoſe two queſtyons
after thy oppynyon be to be vnderſtande.

Howe this queſtyon is to be vnder-
ſtande / that is to ſay where conſcy
ence ſhalbe rewlyd after the
lawe. The.xlv.chapitre.

STudent) the lawe wherof mẽ
ſyon is made in this queſtyon:
that is to saye where cõſcyence
ſhalbe rewlyd by the lawe / is
not as me ſemyth to be vnder
ſtande only of the lawe of reaſon / & the lawe
of god. But alſo of the lawe of mã that is not
contrary to the lawe reaſon nor to the lawe of
god / but that it is ſuperaddyd vnto them for
the better orderyng of the cõmon welth: for ſu
che a lawe of man is alwayes to be ſette as a
rewle in cõſcyence ſo that it is not lawfull for
no man to go fro it on the won ſyde ne on the
other / for ſuche a lawe of man hath not only
the ſtrengthe of mannes lawe / but alſo of the
lawe of reaſon / or of the lawe of god / wherof
it is dyryuyd: for lawes made by man which
haue receyuyd of god power to make lawes

be made by god. And therfore cõscyence must be orderyd by that lawe / as it must be vpon the lawe of god/and the lawe of reason. And ferthermore that lawe wherof mencion is made in the latter ende of the chapitre presydent/ that is to say. where the lawe is to be lefte and forsakyn/ for cõscience is not to be vnderstãde of the lawe of reason/nor of the lawe of god/ for thow two lawes maye not be lefte / nor it is not to be vndertãde of the lawe of man that is made in pticuler cases/ & that is consonant to the lawe of reason/and to the lawe of god: and that yet that lawe shuld be left for conscyence/for of suche a lawe made by man conscyence must be rewlyd as is sayd byfore: nor it is not to be vnderstãde of a lawe made by man cõmaundynge or prohybytynge any thyng to be done that is agaynst the lawe of reason/or the lawe of god / For if any lawe made by man: bynde any persone to any thynge that is agaynst the sayd lawes / it is no lawe / but a corrupcyon and a manyfest errour. Therfore after them that be lernyd in the lawes of englande/the sayd questyon/that is to say where the lawe is to be lefte: for cõscyence is to be vnderstande in dyuers maners/and after dyuers rewles: as hereafter shal somwhat be touchyd

¶ Fyrste many vnlernyd psones byleue that it is lawfull for them to do with good conscyence all thynges / whiche if they do them they shall not be punysshyd therfore by the lawe. And many thynke thus thoughe perauenture the lawe doth not warraunt theym to do that they do / but only when it is done doth not for some reasonable consyderacion punysshe hym that doth it / but leuyth it only to his cõscyence. And therfore many psones do oft tymes that they shuld not do / & kepe as their owne that / that in conscyence they ought to restore / wherof there is in the lawes of englande this case.

¶ If two haue a wood ioyntly / and the one of them sellyth the wood & kepyth all the money holye to hym self: In this case his felowe shall haue no remẽdye agaynst hym by the lawe / for as they whẽ they toke the wood ioyntly put eche other in truste / and were cõtentyd to occupy togyther so the lawe sufferyth them to order the profyttes therof accordynge to the trust that eche of them put other in. And yet if one toke all the profyttes / he is bounde in conscyence to restore the half to his felowe / for as the lawe gyueth hym ryght onlye to the halfe lande / so it gyueth hym ryght only in conscence to the halfe profyttes. And yet neuertheles

it can not be sayd in that case/that the lawe is agaynst conscyence/for the lawe neyther wylleth ne cõmaũdyth that one shuld take all the profyttes/but leuyth it to theyr conscyence/so that no defaute can be founde in the lawe:but in hym that takyth all the profyttes to hym selfe may be assygned defaute/whiche he is bouñde in conscyence to reforme if he wyll saue his soule/thoughe he can not be compellyd therto by the lawe. And therfore in this case (t other lyke/that oppynyon whiche some haue that they may do with cõscyence all that they shall not be punysshed for by the lawe if they do it/is to be lefte for cõscyence/but the lawe is not to be lefte for conscyence.

¶Also it is taken by some men:that the lawe muste be lefte for conscyence where the lawe doth not suffer a man to denye that he hath by fore affermyd by mater of recorde/or for that he hathe wylfullye excludyd hym selfe therof for some other cause/as if the doughter that is only heyre to her father wyll sue lyuerey with her suster that is basterde in that case/she shall not be after receyued to say that her suster is basterde/In so moche that if her suster take halfe the lãde with her:there is no remedye agaynst her by the lawe. And no more there is of dy-

uers other estopelles / whiche were to longe to
reherce nowe . And yet the partye that maye
take auaũtage of such an estopell by the lawe
is bounde in conscyence to forsake that auaun
tage specyally if he were so estoppyd by ygno
raunce / and not by his owne knowlege and
assent / for though the lawe in suche cases gy/
ueth no remedye to hym that is estoppyd / yet
the lawe Jugeth not that the other hath rygh
vnto the thynge that is in Varyaunce by/
twypt theym.

¶ Also it is vnderstande that the lawe is to
be lefte for conscyence / where a thyng is tryed
and founde by verdyt agaynst the trouth / for
as well in the lawe Cyuyle as Canon: the la
we is that the Jugemẽt muste be gyuen accor
dynge as it is pleadyd & tryed lyke as it is in
other lawes / where the Jugẽt must be gyuen
accordynge to that that is pleadyd & prouyd.

¶ Also it is vnderstande that the lawe is to
be lefte for conscyence where the cause of the
lawe dothe ceasse / for when the cause of the
lawe dothe cease / the lawe also dothe ceasse in
conscyence.

¶ Also it is vnderstãd where a lawe is grou
dyd vpon a presumpcyon / for if the presum/
pcyon be vntrewe / then the lawe is not to be

holden in conscyence. And nowe I haue she-
wyd the somwhat howe that questyon / that
is to say where the lawe shal be rewlyd after
coscyence. I pray the shewe me whether there
be not lyke dyuersytyes in other lawes by-
twyxt lawe and conscyence. ¶ Doctour) yes
veryly very many wherof thou haste recyted
one byfore / where a thynge that is vntrewe
is pleadyd and prouyd / in whiche case Juge-
ment must be gyuen accordyng as well in the
lawe Cyuyle as ī the lawe canon. And a no-
ther case is that if the heyre make not his inuē
torye / he shalbe bounde after the lawe Cyuy-
le to all the dettes though the goodes amount
not to so moche. And the lawe Canon is not
agaynst that lawe / and yet in conscyence the
heyre whiche in the lawes of Englande is cal
lyd an executour is not chargyd to the dettes /
but accordyng to the value of the goods. And
nowe I pray the shewe me some cases where
cōscyēce shalbe rewlyd after the lawe. ¶ Stu
dent) I wyll with good wyll shewe the som
what as me thynketh therin.

¶ Here foloweth dyuers cases where
conscyence is to be orderyd after
the lawe. The.xx.chapitre.

Tudent) The eldeſt ſone ſhal haue and enioy his fathers landes at the cõmon lawe in conſcyence / as he ſhall in the lawe. And in burghengly ſſhe the yõger ſone ſhall enioy the inheritaunce / and that in conſcyence. And in gauelkynde all the ſones ſhall inheryt the lande togyther as doughters at the cõmon lawe & that in cõſcyence. And there can be none other cauſe aſſygned why conſcyence in the fyrſte caſe is with the eldeſt brother / & in the ſecõde with the yonger brother / and i the thyrde caſe with all the bretherne / but bycauſe the lawe of englande by reaſon of dyuers cuſtomes doth ſomtyme gyue the lande holly e to the eldeſt ſone / ſomtyme to the yongeſt / & ſomtyme to all.

¶ Alſo if a man of his mere mocyon make a feffemẽt of two acres of lande lyinge in two ſeuerall ſhyres / and makyth lyuerey of ſeaſon in the won acre in the name of bothe / In this caſe the feffe hath ryght / but onlye to that acre wherof lyuerey of ſeaſon was made bycauſe he hath no tytle by the lawe / but if both acres had ben in one ſhyre he had had good ryght to bothe. And in theſe caſes the dyuerſytye of the

lawe makyth the dyuersytye in conscyence.
¶ Also if a man of his mere mocyon make a feffement of a maner and sayth not to haue & to holde. &c. With the appurtenaũces in that case the feffe hath right to the demesne lãdes & to the rentes / if there be atturnament and to the cõmons ꝑteynynge to the maner: but he hathe nother ryght to the aduowsons appendaunt if any be / nor to the vylleyns regardant / but if this terme with thappurtenaunces had ben in the dede / the feffe had had ryght in conscyence aswell to the aduowsons and vylleynes / as to the resydewe of the maner: but if the kynge of his mere mocyon gyue a maner with the appurtenaũcꝫ / yet the done hath neyther right in lawe nor conscyence to the aduowsons or vylleyns. And the dyuersytye of the lawe in these cases makyth the dyuersytie of cõscyence.
¶ Also if a man make a lease for terme of yeres yeldynge to hym and to his heyres a certayne rent vpon condycyon that if the rent be byhynde by. xl. dayes. &c. that then it shal be lawfull to the lessour & his heyres to rentre. And after the rent is behynde the lessour askyth the rent accordynge to the lawe / and it is not payde / the lessour dyeth his heyre entreth. In this case his entre is lawfull both in lawe & cõscy-

ence / but if the lessour had dyed byfore he had demaundyd the rent. And his heyre demaũdes the rent / & bycause it is not payde he rentreth / In that case his rentre is not lawfull nother in lawe nor in conscyence.

¶ Also if the tenaunte in dower sowe her lande and dye byfore her corne be rype that corne in cõscyence bylõgeth to her executours / & not to hym in the reuercyon / but other wyse it is in conscyence of grasse & frutes. And the dyuersytye of the lawe makyth there also the dyuersytie in conscyence.

¶ Also if a man seasyd of landes ī his demesne as of fee / byqueathyth the same by his laste wyll to another / and to his heyres and dyeth / In this case the heyre notwithstandynge the wyll hathe ryght to the lande in conscyenæ. And the reason is bycause the lawe Jugyth that wyll to be voyde / and as it is voyde in the lawe so it is voyde in conscyence.

¶ Also if a man graunte a rente for terme of lyfe & make a lease of lande to the same graũte for terme of lyfe. And the tenaũte alyenyth both in fee / In this case he ī the reuercion hath good tytle to the lande both in lawe and conscyence and not to the rent / and the reason is bycause the lande by that alyenacion is forfet

by the lawe to hym in the reuercyon and not the rent.

¶ Also if a man haue two sones one byfore spouselys and another after spouselys/ and after the father dyeth seasyd of certayne landes. In that case the yonger sone shall enioye the landes in this realme as heyre to his father both in lawe and conscyence. And the cause is bycause the sone borne after spouselys/ is by the lawe of this realme the verye heyre. And the elder sone is a bastarde/ And of these cases and of many other lyke in the lawes of Englande may be formyd the silogysme of conscyence/ or the trewe Jugemēt of cōscyēce in this maner/ sinderesis mynystreth the maior thus: Ryght wysenes is to be done to euery man Vpon whiche maior the lawe of Englande mynystryth the minor thus/ the inherytaunce belongyth to the sone borne after spousellis and not to the sone borne byfore spouselys / then conscyence makyth the conclusyon and sayth: therfore the īherytaūce is in cōscyence to be gyuen to the sone borne after spouselys. And so in other cases ifunyte may be formyd by the lawe the silogysme or the ryght Jugemēt of cōscyence: Wherfore they that be lernyd in the lawe of the realme say that euery case wher any lawe

is ordeyned for the dyspoſicion of landes and goodes / Whiche is not agaynſte the lawe of god / nor yet agaynſte the lawe of reaſon / that that lawe byndeth all theym that be vnder the lawe in the courte of conſcyence / that is to ſay inwardly in his ſoule. And therfore it is ſomwhat to meruayll that ſpyrytuell me̅ haue not endeuoryde them ſelfe in tyme paſte to haue more knowlege of the kynges lawes then they haue done / or that they yet do / for by the ygnoraunce therof they be oft tymes ygnoraunte of that / that ſhuld order them accordynge to ryght and Juſtyce as well conſetnynge them ſelfe as other that come to them for counſeyll. And nowe for as moche as I haue answerd to thy queſtyons as well as I can / I pray the that thou wylt ſhewe me thy oppynyon in dyuers caſes formyd vpon the lawe of Englande wherin I am in doute / What is to be holden in conſcyence. ¶ Doctoure) ſhewe me thy queſtyons / and I wyll ſaye as me thynkyth therin.

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¶ The fyrſte queſtyon of the ſtudent.

The.xxvi.chapitre.

Student) if any infante that is of the age of .xx. yere and hath reason and wysdom to gouerne hym selfe selleth his lande/ and with the money therof byeth other lande of greater value then the fyrst was and taketh the profyttes therof/ whether may that infante aske his fyrst lande agayne in conference/ as he may by the lawe. ¶ Doctoure/ What thynkyst thou in that questyon. ¶ Student) me sempth that for as moche as the lawe of Englande in this artycle is groūdyd vpon a presumpcyon that is to saye that infantes cōmonly afore they be of the age of. xxi. yeres be not able to gouerne theym selfe: that yet for as moche as that presumpcion fayleth in this infante that he may not in this case aske the lande agayn: that he hath solde to his great auauntage as byfore appereth. ¶ Doctoure) Is not this sale of the infante and the feffement made therupon if any were voydable in the lawe. ¶ Student) yes verylye. ¶ Doctoure) And if the feffe haue no rygh by the bargayne / nor by the feffement made therupon / wherby shulde he then haue rygh therto as thou thynkest. ¶ Student) by cōscyence as me thynkyth for the reason that I ha/

ue made byfore. ¶ Doctour) and vpon what lawe shuld the cõscyence be groũdyd that thou spekyst of / for it can not be groundyd by the lawe of the realme as thou hast sayd thy selfe And me thynkyth that it can not be groũdyd vpon the lawe of god / nor vpon the lawe of reason / for feffemẽtꝭ nor cõtractꝭ be not groũdyd vpon neyther of tho lawes / but vpõ the lawe of man. ¶ Student) after the lawe of propyrtye was ordayned / the people myghte not conuenyently lyue togyther without contractes / and therfore it semyth that contractes be groundyd vpon the lawe of reason / or at the leste vpon the lawe that is callyd Jus gẽtium. ¶ Doctour) though contractes be groũdyd vpon that lawe that is callyd Jus gentium bycause they be so necessarye and so generall amonge all people / yet that prouyth not that contractꝭ be groundyd vpon the lawe of reason / for though that lawe callyd Jus gentium be moche necessarye for the people / yet it may be chaungyd. And therfore if it were ordayned by statut that there shuld be no sale of lande / ne no cõtracte of goodes / & if any were that it shuld be voyde / so that euery mã shuld cõtynue stylle seasyd of his landes & possessyd of his goodꝭ / the statute were good. And then

if a man agaynst that statute solde his lande for a sume of money: yet the seller myght lawfully reteygne his lande accordynge to the statute. And then he were boūde to no more / but to repay the money that he receyuyd with reasonable expences in that behalfe / and so in lyke wyse me thynketh that in this case the infante may with good cōscyence reentre in to his fyrste lande bycause the contracte after the maxymes of the lawe of the realme is voyde / for as I haue harde the maxymes of the lawe be of as great strength in the lawe as statutes. And so me thinketh that in this case the infante is bounde to no more / but only to repay the money to hym that he solde his lande vnto / with suche reasonable costes and charges as he hath sustayned by reason of the same. ¶ Student) For this tyme I holde me contentyd with thy oppynyon.

¶ The seconde questyon of the student. The .xxvii. chapitre.

Student) If a man that hath landes for terme of lyfe be impanelde vpon an inquest / and therupō leseth yssues and dyeth / whether may the yssues be leuyed

Vpon hym in the reuercyon in conscyence / as they may be by the lawe. ¶ Doctour) If they may be leuyed by the lawe / What is the cause Why thou doest doute whether they may be leuyed by conscyence. ¶ Student) for there is a maxyme in the lawes of Englãde / that where two tytles ronne togyther / the eldest tytle shalbe preferryd. And in this case the tytle of hym in the reuercyon is byfore the tytle of the forfetour of the yssues. And therfore I doute somwhat whether they maye be lawfully leuyed. ¶ Doctoure) by that reason it semyth thou arte in doute what the lawe is in this case / but that muste necessaryly be knowen / for els it were in vayne to argue what cõscyence wyl therin. ¶ Student) it is certayne that the lawe is suche / & so it is lykewyse if the husbõde forfet yssues & dye / tho yssues shalbe leuyed on the lãdes of the wyfe. ¶ Doctour) And if the lawe be suche it semyth that conscyence is so in lykewyse / for syth it is the lawe that for execucyon of Justyce euery mã shalbe ĩpanellyd when nede requyreth it semyth resonable: that if he wyll not appere that he shuld haue some punysshement for his not apperaũce for els the lawe shulde be clerely frustrate in that poynte. And that payne as I haue herde

is that he shall lese yssues to the kynge for his not apperaūce: Wherfore it semyth not inconuenyent nor aggaynst cōscyence thoughe the lawe be that tho yssues shalbe leuyed of hym in the reuercyon / for that condycyon was secretlye vnderstande in the lawe to passe with the lease when the lease was made. And therfore it is for the lessour to be ware and to preuēt that daunger at the makynge of the lease / or els it shalbe aiuged his owne defaute. Then this practaket maxyme / wherby suche yssues shalbe leuyed vpon hym in the reuercyon is a partyculer exercyon in the lawe of Englande from that generall maxyme that thou hast remembred byfore / that is to say that where two tytles ronne togyther / that the eldest shalbe preferryd / so in this case that generall maxyme in this poynte shall holde no place nother in lawe nor in cōscyence / for by this partyculer maxyme the strēgth of that generall maxyme is restrayned in euery intent.

¶ The thyrde questyon of the student. The xxvii. chapitre.

STudent / if a tenaunte for terme of lyfe / or for terme of yeres do waste wher

by they be bounde by the laWe to yelde to hym in the reuercyon treble damages. And ſhall alſo forfet the place Waſted / Whether is he bound in conſcyence to pay tho damages and to reſtore the place Waſted immedyatlye after the Waſte done / as he is the ſyngle damages / or that he is not bounde therto tyll the treble damages & the place Waſted be recouerid in the kynges courte. ¶ Doctour) byfore Jugement gyuen of the treble damages & of the place Waſted he is not bounde in cõſcyence to pay them For it is Vncertayne What he ſhuld pay / but it ſuffyceth that he be redye tyll Jugement be gyuen to yelde damages accordyng to the Value of the Waſte / but after the Jugement gyuen: he is bouñden in conſcyence to yelde the treble damages / & alſo the place Waſted. And the ſame laWe is in all ſtatutes penall / that is to ſay that no man is bounde in cõſcyence to pay the penaltye tyll it be recouerid by the laWe. ¶ Student) Whether may he that hath offendyd agaynſt ſuche a ſtatute penal defende the accyon and hyndre the Jugemẽt to the intent he Wolde not pay the penalytye / but onely the ſyngle damages. ¶ Doctour) If the accion be taken ryght Wyſely accordynge to the ſtatute / and Vpon a Juſte cauſe the defendaũt may in

no wyse defende the accyon / onles he haue a trewe dylatory mater to plede / whiche shulde be hurtfull to hym if he pledyd it not / thoughe he be not bounde to pay the penaltye tyll it be recoueryd.

¶ The fourth questyon of the student. The.xxiiii.chapitre.

Student) If a man infeffe another in certayne lande vpon cōdycyon that if he infeffe any other / that it shalbe lawfull for the feffour and his heyres to re entre.&c. whether is this condycion good in cōscyence though it be voyde in the lawe. ¶ Doctour) what is the cause that this condycion is voyde in the lawe. ¶ Student) The cause is this / by the lawe it is incydent to euery state of fe symple / that he that hath that estate may lawfully make a feffemēt therof. And the feffe takyth that auctorytie of the feffoure. And then when the feffoure restrayneth hym after that he shall make no feffement agaynst his owne former graunte / and also agaynst the purytye of the state of a fee symple / but if the condycyon had ben that he shulde not haue in-

feffyd suche a man/or suche a man that cōdy-
on had ben good/for he myght yet īfeffe other:
¶ Docture) thoughe the sayd condycyon be a-
gaynst the effecte of the state of a fee symple/
and also agaynst the lawe: Neuertheles it is
not agaynst the intent that the partyes had/ &
that at the tyme of the lyuerey. And for as mo
che as the intent of the partyes was that if the
feffe infeffyd any man of the lande/that then
the feffour shulde entre/and to that intent the
feffe toke it/ & after breke the intent it semyth
that the lande in cōscyence shuld returne to the
feffour. ¶ Student) the intent of the partyes
in the lawes of Englande is voyde in many
cases/ that is to saye if it be not orderyd accor-
dyng to the lawe. As if a man of his mere mo
cyon without any recompence intendynge to
gyue landes to another and to his heyres ma-
ke a dede vnto hym: wherby he gyueth hym
the lādes to haue and to holde to hym for euer
intendyng that by that worde: for euer/the fef
fe shuld haue the landes to hym and to his hey
res in this case his intent is voyde/ & the other
shall haue the lande only for terme of lyfe. Al
so if a man gyue landes to another and to his
heyres for terme of [illegible] x. yeres intendynge that
if the lessee dye within the terme/that then his

heyres shuld enioy the lande durynge the terme
In this case his entent is voyde / for by the
lawe of the realme al chatells real & personal
shall go to the executours / & not to the heyre.
Also if a man gyue landes to a man & to his
wyfe & to the thyrde pson intēdyng that euery
of them shuld take the thyrde parte of the lāde
as thre cōmon psons shuld his intent is voy-
de / for the husbonde and the wyfe as one per-
sone in the lawe shall take onlye the one halfe
and the thyrde pson the other halfe / but these
cases be alwaye to be vnderstande where the
sayd estates be made without any recōpence.
And for as moche as in this pryncypall case /
the intent of the feffour is groundyd agaynst
the lawe: & that there is no recōpence appoyn-
tyd for the feffement me thynkyth that the fef
four as in the lawe of the realme hath neyther
ryght to the lande by lawe nor conscyence / for
if he shuld haue it by conscyence / that conscyen
ce shuld be groūdyd vpon the lawe of reason
and that it can not / for cōdycyons be not groū
dyd vpon the lawe of reason / but vpon the
mayntenes & custome of the realme. And ther-
fore it myghte be ordayned by statute that all
condycyons made vpon lande shuld be voy-
de. And when a cōdycion is voyde by the ma

ymes of the lawe/it is as full voyde to euery intent as it were made voyde by statute/ & so me thynkyth that in this case the seffour hath no right to the lande in lawe nor in cõscyence. ¶ Doctour) I am content thy oppynyon stãde tyll we shall haue a better leasure to speke ferther in this mater.

¶ The.v.questyon of the student. The.xxvi.chapitre.

Tudent) If a fyne with proclamacion be leuyed according to the statute and no clayme made within. v.yeres.&c. whether is the ryght of a straũger extynctyd therby in conscyence/ as it is in the lawe. ¶ Doctoure) vpon what consyderacion was that statute made. ¶ Student) that the right of landes and tenementes myght be the more certaynly knowen & not to be so vncertayne as they were byfore that statute. ¶ Doctoure) and when any lawe of mã is made for a cõmon welth/or for a good peace & quyetnes of the people / or for any inconuenyence or hurte to be sauyd from them/ that

la we is good thoughe percase it eptyncte the ryght of a straunger and muste be kept in the courte of conscyence/ for as it is sayd byfore in the.xiii.chapitre/ By la wes ryght wysely may be by many: it apperyth who hath ryght to landes and goodes: for what so euer a many hathe by suche a la we/ he hath it ryght wysely. And what so euer he holdyth agaynst suche a la we he holdyth vnryght wysely. And ferthermore as it is sayde there all la wes made by many/ whiche be not contrarye to the la we of god/ muste be obseruyd and kepte/ and that in conscyence. And he that dyspyseth them dyspyseth god/ and he that resystyth them resystyth god/ also it is to be vnderstande that possessyons and the ryght therof be subiecte to the la wes/ so that they therfore with a cause resonable may be translated and alteryd from one many to another by the acte of the la we. And of this consyderacion that la we is groundyd that by a contracte made in feyres and markettys the proprietye is alteryd except the proprietye be to the kynge/ so that the byer pay tolle/ or do such other thinges as is acustomyd there to be done vpon suche contractes/ and that the byer knowyth not the former ppretye. And in the la we Cyuyle there is a lyke la we that if a many ha-

ue another mannes good with a tytle thre ye/
re thynkynge that he hath ryght to it/he hathe
the very ryght vnto the thyng:and that was
made for a lawe to the intent that the ꝓpretye
and ryght of thynges shuld not be vncertay/
ne/and that varyaunce and stryfe shulde not
be amonge the people. And for as moch as the
sayd statute was ordayned to gyue a certeyn/
tye of tytle in the landes and tenementes com
prysyd in the fyne / It semyth that that fyne
extynctyth the tytle of all other/as well in cō
scence as it doth in the lawe.

¶ Finis

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of this present boke.

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¶ A questyon
¶ Here after folowyth a Questyon made by the Doctoure / howe certayne recouerynes that be vsyd in the kynges courtes to defete Tayled lande may stande With conscyence.

When the sayd Dyalogue was clerely fynysshed / & that the sayde Doctoure and Student were departyd: shortly after they met to gyther agayne: and then the Doctoure sayde to the Student thus: At oure laste beynge to gyther when we reasoned dyuers thynges concernynge the groundes of the lawes of Englande and conscyence / whiche reasons I haue causyd to be wrytten in the englysshe tongue as a Dyalogue: I purposyd to haue askyd of the a questyon: whiche at our departynge cam not to my mynde: wherfore I pray the if thou haue so moche leasure / that I may now here thy mynde therin. ¶ Student) Let me here thy questyon & I shall with good Wyll say as I thynke therin. ¶ Doctoure) I haue herde saye that when a man that is seasyd of landes in the tayle selleyth the lande. That it is cōmonly vsyd that he that byeth the lande shal for his suertye / and for the auoy

dynge of the tayle i that byhalfe: cause some of his frendes to recouer the sayd lãdes agaynst the sayd tenaũte in tayle: Whiche recouerye as I haue ben credably enformyd shall be had in this maner: the demaundauntes shall suppose in theyr Writte & declaracyon that the tenaũte hath no entre / but by suche a straunger as the byer shall lyst to name and appoynt: Where in dede the demaundauntz neuer had possessyon therof / nor yet the sayde straunger. And ther/ upon the sayd tenaũte in tayle shall appere in the courte and by couyn and by assent of the partyes shall Vouche to Warraunte one that he knoweth Well hathe nothynge to yelde in Value. And that Vouchee shal appere and the demaũdauntz shall declare agaynst hym: and therupon he shall take a daye to enpetle in the same terme: and at that day by assent and co/ uyn of the ptyes / he shall make default Vpon Which default bycause it is a default in despy te of the courte / the demaundauntes shall ha/ ue Iugement to recouer agaynst the tenaunte in tayle / & he ouer in Value agaynst the Vou/ chee and this Iugemẽt and recouery in Value is taken for a barr of the tayle for euer / how/ may it therfore be taken that that law stãdyth With conscyence that at it semyth assentyth to

ſuche fayned recouerȳes. ¶ Student) If the tenaunte in tayle ſell the lande for a certayne ſume of money as is agreed bytwyxt them at ſuche a pryce as is cõmonly vſed of other landes / & for the ſuretye of the ſale ſuffreth ſuche a recouerye as is aforeſayd / What is the cauſe that mouyth the to doubte whether the ſayd cõtracte or the recouerye made therupon / for the ſuretie of the byer that hath trewely payde his money for the ſame ſhuld ſtande with conſcyence. ¶ Doctoure) Two thynges cauſe me to doubte therin / one is for that / that after our lorde had gyuen the lãde of byheſte to Abraham and to his ſede / that is to ſay to his chyldren in poſſeſſyon alwaye to contynue / he ſayde to Moyſes as it apperyth leuitic. xxv. the lande ſhall not be ſolde for euer / for it is myne. And then oure Lorde aſſygned a certayne maner howe the lande myght be redemyd in the yere of Jubylye if it were ſolde byfore: and for as moche as our Lorde wolde that the lãde ſo gyuen to Abraham and his chyldren ſhulde not be ſolde for euer: it ſemyth that he doth agaīſt the enſample of god that alyenyth or ſellyth the lande that is gyuen to hym and to his chyldren as landes Intayled be gyuen / Another cauſe is this: It apperyth by the cõmaūdemēt

of god that thou shalte not couet the howse o
thy neyghboure.&c. And if the concupyscenc
be prohybyted more stronger / the vnlawful
takynge and withholdyng therof is prohyby
and for as moche as tayled lande whan th
auncestre is deed is a thyng that of ryght is b
longynge to his heyre / for that he is heyre ac
cordynge to the gyfte / howe maye that land
with right or conscyence be holden from hym
¶ Student) notwithstandynge that prohyb
cyon of almyghty god / wherby the lande tha
was gyuen to Abram and to his seed mygh
not be alyened for euer / yet lādes within wa
lyd townes myghte lawfully be alyened fo
euer: except the landes of the leuytes as it ap
peryth in the sayde Chapitre of leuitic.xx
And so it apperyth that the sayd prohybycyo
was not generall for euery place / and that
monge the Jewes: And it apperyth also th
it was gyuen only for Abram & his chyldre
and so it was not generall to all people: An
it apperyth also that it extendyd not but on
to the lande within the lande of promyssyo
as it apperyth by the wordes of the sayd ch
pitre / where it is sayde thus all the Regy
of youre possessyon shall be solde vnder t
condycyon of redemynge / wherby appery

that landes in other coũtres be not bounde to that condycion / and as they be not bounde to that cõdycyon: by the same reason it folowyth that they be not bounde to the same succession Therfore the sayd lawe that wyll that the lãde gyuen to Abraham and to his sede shal not be solde for euer / byndeth no lande out of the lande of promyssion / and sũme men wyll say that sythen the passyon of out Lorde was pro mulgate & knowen it byndeth not there. And to thy seconde reason which is groũdyd vpon the cõmaundement of god: It muste nedes be graũted that it is not lawful to any man vn lawfully to couet the house of his neyghbour: and that they more stronger he maye not vn lawfully take it from hym / but they it remayneth for the yet to proue howe in this case this tayled lande that is solde by his auncestre and wherof a recouery is had of recorde in the kynges courte may be sayd the lande of the heyres (Doctoure) that may be prouyd by the lawe of the realme / that is to saye by the statute of Westmester the secõde the firste chapitre wher it is sayd thus. The wyll of the gyuer expresely contayned in the dede of his gyfte shalbe fro henssorth obseruyd / so that they to whom the tenemẽt; be so gyuen shal not haue power

to alyen / but that the landes after theyr deth ſhall remayne to theyr yſſue or retourne to the donour out if the yſſue fayle / by the whiche ſtatute it appertyth euydentlȳ that thoughe they to whom the tenementȝ were ſo gyuen alyened them away / that yet neuertheles they in lawe and conſcyence by reaſon of the ſayde ſtatute ought to remayne to the heyres accordīg to the gyfte / for it is holden cōmonly by al doctours that the cōmaundementȝ & rewles of the lawe of man or of a poſitiue lawe that is lawfulȝ ly made / bynde all that be ſubgiettes to that lawe accordynge to the mynde of the maker / and that in the courte of conſcyence . ¶ Stu/dent) doeſt thou thynke that if a man offende agaynſt a ſtatute penall that he offendyth in cōſcyence admyt that he do it not of a wylfull dyſobedyence for that he wyll not obey the lawe. ¶ Doctour) If it be but onely a ſtatute that is callcd popular it byndeth not in cōſcyence to the payment of the penalytie / tyll it be recouerȳd by the lawe. And than it doth bynde in conſcyence: but if a ſtatute be made prin cypally to remedy the hurte of the partye: and for that hurte it gyueth a penaltie to the partie in that caſe the offendour of the ſtatute is bou de immedyatlye to reſtore the damages to the

Value of the hurte as it is vpon the statute of Waste / but the penaltye aboue the hurte he is not bounde to pay tyll Jugemēt be gyuen as it is sayd byfore: but statut⁊ by the whiche it is assygned who shall haue right or propertie to these landes & tenementes / or to these goodes and catallys if it be not agaynst the lawe of god nor agaynst the lawe of reason bynde all them that be subgect to the lawe: in lawe and conscyence / and suche a statute is the statute of Westmestet the.ii. whereof we haue treatyd by⁊ fore / wherfore it muste be obseruyd in conscy⁊ ence. ¶ Student) but sume hold that the sayd statute of Westm the.ii. was made of a singu laritie and presumpcion of many that were at the sayd Parliament for exaltynge and mag nyfyeng of theyr owne blode: & therfore they say that that statute made by suche a presum⁊ pcion bynd̄eth not in conscience. ¶ Doctour) Jt is very perylous to iuge for certayne that the sayd statute was made of suche a presum⁊ pcion as thou spekest of / for there be many cō⁊ syderacions to proue that the sayd statut was not made of suche a presūpcion but of a very good mynde of all the Parlyament / or at the leste of the more parte therof / & for the cōmon welth of all the realme / and fyrste in the kyn⁊

ge the Whiche in the ſayde Parlyament Was the hed and moſte chyef and pryncypall parte of the Parlyament as he is in euery Parlya= ment/can not be noted no ſuche intent/For it is not neceſſary nor it Was not then i vſe that landes of the crowne ſhulde be entayled: and in ſpirituall men ne yet in certayne burgeſies and cytyzyns of the ſayde Parlyament Whi= che at that tyme had no lande: there can be no= ted no ſuche ſingularitie / nor yet in the noble men and gentylmen nor ſuche other as Were of the ſayd Parlyament & had landes and te= nementes: It is not good to Juge in certayne that they dyd it of ſuche a preſumpcion / but it is good and expedyent in this caſe as it is in other caſes that be in doubte to holde the ſurer Way/and that is that it Was made of charyte to the intent that he nor the heyres of hym to Whom the lande Was gyuen ſhuld not fall in to extreme poucrtyc/and therby haplye to ron in to offence agaynſt god/and though haplye it Were trewe as they ſay that it Was not ma= de of charytye but of preſumpcion and ſyngu laritie as they ſpeke of. Neuertheles for as mo che as the ſtatute is not agaynſt the lawe of god / nor agaynſt the lawe of reaſon it muſte be obſeruyd by all them that be ſubgectes vn=

to that lawe / For as Johñ Gerson sayth in the treatyse that he entytulteh in laten De vi ta spirituali aīe: the fourth lesson & the thyrde corollarye: sayth that god wyl that makers of lawes Juge onely of outwarde thynges and reserue secrete thynges to hym. And so it appe ryth that man maye not iuge of the inwarde intent of the dede / but of suche thynges as be apparaunte / and certayn it is that it is not ap paraunte that there was any suche corrupt en tent in the makers of the sayde statute / howe may it therfore be sayd that that lawe is good or ryghtwyse / that not oonlye suffreth suche thyngꝫ agaynst the statute / but also agaynst the cōmaundement of god. ¶ Student) To that sūme answere & say. that when the lande is solde and a recouery is had therupon in the kyngꝫ courte of recorde that it suffiseth to barr̄ the tayle in conscyence / for they saye that as the tayle was fyrste ordayned by the lawe / So they saye that by the lawe it is adnulled agayne. ¶ Doctour) be thou thy selfe Juge if in that case there be lyke auctoritie in the ma kynge of the tayle as there is in the adnul lynge therof / for it was ordayned by auctory tie of Parlyamēt / the whiche is alway taken for the most hyghe courte in this realme byfore

any other/ and it is anulled by a false suppo-
sell: for that that they that be named demaun-
daunt shuld haue ryght to the lande where in
trouth they neuer had ryght therto/ Wherupon
folo weth a false supposell in the wrytte/ and
a false supposell in the declaracyon & a vou-
cher to waraunte by couyn of suche a persone
as hath no thynge to yelde in value/ and ther
upon by couyn and collucyon of the ꝑtyes fo-
lo weth the defaulte of the vouchee: by the whi
che defaulte the Jugemēt shal be gyuen/ And
so all that Jugement is deryuyed and groun-
dyd of the vntrue supposell and couyn of the
partyes/ Wherby the lawe of the realme that
hath ordayned suche a wryt of entre to helpe
them that haue right to lādes or tenēt is defrau
dyd: the courte is desceyuyd/ the heyre is dishe-
ryted: & as it is to doubte the byer & the seller &
theyr heyres & assygnes hauyng knowlege of
the tayle be bounde to restytucyon/ and very-
lye I haue harde many tymes/ that after the
lawe: suche recoueryes shuld be no barr̄ to the
heyre in the tayle/ if the law of the realme my-
ghte be therin īdifferently harde. ¶ Student)
I can not se but that after the lawe of the re-
alme it is a barr̄ of the tayle/ for when the te-
naunt in tayle hath vouched to warrauntye/

and the Vouchee hath appered and entred in to the Warrauntye/and after hath made defaute in despyte of the courte Wherupon Jugement is gyuen for the demaundaunt agaynst the tenaunt/ and for the tenaunt that he shall recouere in Value agaynst the Vouchee: if the heyre in the tayle shuld after bryngе his formedone and recouer the landes intayled/and after the Vouchee purchaseth landes: than shuld the heyre also haue execucion agaynst hym to the Value of the landes entayled as heyre to his auncestre that Was tenaũt in the fyrst accyon: & so he shulde haue his owne landes/ and also the landes recouerыd in Value/ & therfore bycause of that presũpcion that the Vouchee may purchase landes after the Jugement / some be of oppinyon that it is in the lawe a good barr of the tayle. (Doctour) I Wyll take a respyte to be auysed of that thou hast sayd of that recouerye in Value. And if thou can yet shewe me any other consyderacion Why the sayd recouerues shuld stande With conscyence: I pray the let me here thy concepte therin / for the multytude of the sayde recouerues is so great that it were great pytie that al they shuld be boũde to restytucion that haue landes by such recouerues syth there is none yt dysposyth them to restore.

¶ Student) some men make an other reason to proue that the sayd recouerynes shuld be suffycyent by the lawe to barr the tayle / and if they be suffycyent therto in the lawe / they be also suffycyent in conscyence. ¶ Doctoure) What is theyr reason therin. ¶ Student) In the. viii. yere of kynge Henry the. viii. the. iiii. chapitre / Amonge other thynges it is enacted that all recouerers theyr heyres and assygnes may aduowe and iustyfie for rentes seruyces & customes by them recouered: as they agaynst whom they recouerȳd myght haue done: And then they say that when the Parlyament gaue to suche recouerers auctorytie to aduowe & iustyfye for suche rentȝ & customes & seruyces / that the entent of the parlyam^{t} was that such recouerers shuld haue right to that: for the whiche they shuld aduowe or iustyfye: for els they saye that it shulde be in vayne to gyue them suche power / & that the Parlyamēt shuld els be taken in maner as fortyfyers of wrongful tytles: and so they say that suche recouerers by reason of the sayd statute haue right by the lawe. ¶ Doctour) that statut as it semyth was made onely to gyue to the recouerers a forme to aduowe and iustyfye / whiche they had not byfore though they had recouered vpō a good

tytle. And the cause why they had no forme to
aduowe or iustyfie byfore the said statut was
for as moche as the recouerers dyd not by the
pretence of theyr accyon afferme the possessy-
on of hym or them agaynst whom they recoue
tyd / nor claymed not by them / but rather dis-
afermyd & dystroyd theyr astate. And therfore
they can not alege any contynuaunce of theyr
tytle by them / as they may that haue rents or
seruyces or suche other of the graunt of other.
And therfore as it semyth the most pryncipall
intent of that statute was: that suche recoue-
rers shuld auowe & iustyfye for rents seruyces
customes as they shulde or myght do that had
them by fyne or dede: not hauynge any respect
as it semyth whether they recouеryd agaynst
tenaũt in fee symple or in fee tayle / nor where
the recouеryes were had. Upon a tightful tytle
And therfore as me semyth the sayde estatute
neyther affermyth nor dyssafermyth the tytle
of the recouеryes whereby they do aduowe /
for if any man had ryght byfore the recouery
that ryght shuld remayne unto hym notwith
stangynge the sayd statute: and so me semyth
that the tytle of them that haue landes entay-
led by suche recouеryes is no thynge fortyfyed
nor affermyd by the said estatut / but that they

are in the same case as they were byfore: What thynkest thou therin. ¶ Student) this mater is great / for as thou sayest there be so many that haue tayled landes by suche recouetyes / that it were great pytie and heuynes to condempne so many persones and to Juge that they were bounde to restytucyon: For I thynke there be but fewe in this Realme that haue landes of any notable value: but that they or theyr auncestours / or som other by whom they clayme haue had parte therof by suche recouetyes / In so moche that lordes spyrytuall and temporall / knyghtes / squyres / tyche men / and poore Monasteryes / Colleggys / and hospytalys haue suche landes / for suche recouetyes haue ben vsed of longe tyme / Who may thynke therfore without great heuynes that so many men shuld be bounde to restytucion / and that yet as thou sayst / no mā disposeth hym to make restytucion. And so I am in maner ppleyed and wot not what to saye in this case / but that yet I truste that ygnoraunce may excuse many persones in that behalfe. ¶ Doctoure) ygnoraunce of the deed may excuse, but ygnoraunce of the lawe excuseth not / but it be inuyncyble / that is to saye that they haue done that in them is to knowe the trouth as to coun

eyll with lernyd men: and to aske them what the lawe is in that behalfe / and if they answere them that they may do this or that lawfully / than they be therby excused in conscyence / but yet in mānes lawe they be not therby dyscharged / But they that haue taken vpon them to haue knowlege of the lawe be not excused by ygnoraūce of the lawe / ne no more ar they that haue a wylfull ygnoraunce / that wold rather be ygnorant then to knowe the trouth. And therfore they wyll not dyspose theym to aske any counceyll in it / and if it be agaynst the lawe of god / or the lawe of reason / no man shal be excusyd by ygnoraunce / and so there be but fewe that be excused by ygnoraunce. ¶ Student) What then / shall we condempne so many and so notable men. ¶ Doctour) We shall not condempne them / but we shall shewe them theyr peryll. ¶ Student) yet I trust that theyr daunger is not so great that they shuld be boūde to restytucion / For Johñ Gerson sayth in the sayd boke called De vnitate ecclesiastica cōsideratione secūda: qđ cōis error facit ius / That is to say that a comen error maketh a right / of whiche wordes as it semyth some trust may be had / that though it were fully admyttyd that the sayde recouery-

es Were fyrste had vpon an vnlawfull grou
de and agaynst the good ordre of conscyence/
that yet neuertheles forasmoche as they haue
ben vsed of longe tyme/so that they haue ben
taken of dyuers men that haue ben ryght wel
lerned for a lawe that the byers partlie be ex
cusyd so that they be not bounde to restitucion
And moreouer it is certayne that that statute
of Westm. the.ii. nor none other statute made
by man can not be of greater vertue or stren
gthe/than was the bonde of matrymony that
was ordayned by god/And though that bon
de of mattymony was idyssoluble/yet neuer
theles Moyses suffred a byll of refusell to the
Jues/Whiche in laten is called libellum repu
dii/so they myght therby forsake theyr wyfs
As it apperyth deuteron. xxiii. and therfore ly
ke as a dyspensacyon was sufferyd agaynst
that bonde/so it semyth it may be agaynst this
statut. ¶ Doctour) as to that treason that thou
hast last made of a byll of refusell/let all pur
chasours of lande here What our Lorde sayth
in the Hospell to the Jues of that byll of refu
sell: Matheii. xix. Where he sayth thus to the
hardnes of your hertz/Moyses suffred you to
leue your wyfes/for at the begynnynge it was
not so/of Whiche Wordes Doctours holde co

monlye that thoughe ſuche a bylle of refuſell
was lawfull ſo that they that refuſyd theyr
wyfes therby/ſhulde be without payne in the
lawe, that yet it was neuer lawfull ſo that it
ſhulde be without ſynne. And ſo lyke wyſe it
may be ſayd in this caſe/that ſuche recouerys
be ſuffred for the hardnes of the hertes of En-
glyſſhemen/whiche deſyre lande and poſſeſſy
ons with ſo great gredynes that they can not
be withdrawen from it neyther by the lawe of
god/nor by the lawe of the realme. And ther-
for that ryche men ſhuld not take the poſſeſſy-
ons of poore men from them by power with-
out coloure of tytle/that is to ſaye eyther by o-
pen dyſſeſon/or by the onely ſale of the tenaũt
in tayle agaynſt the expreſſe wordes of the ſta
tute/ ſuche recouerys haue ben ſuffred. And
though for theyr great multytude they may ha
plye be without payne as to the lawe of the
Realme: yet it is to feare that they be not with
out offence as agaynſt god / as to thy other
treaſõ that a cõmon errour ſhuld make a ryght
thoſe wordes as me ſemyth be to be thus vn-
derſtande/that a cuſtome vſed agaynſt the la
we of man ſhalbe taken in ſome countres for
lawe if the people be ſuffred ſo to contynue/
And yet ſome men call ſuche a cuſtome an er-

rour bycause that the contynuaunce of that cu
stome agaynst the lawe: was ꝑtlye an errour
in the people/for that that they wold not obey
to the lawe that was made by theyr superiour
to the contrarye of that custome/ but it is to be
vnderstande that the sayd recoueryes though
they haue ben longe vsed may not be taken to
haue the strengthe of a custome / for many as
well lernyd as vnlernyd haue alwayes spo-
ken agaynst them and yet do. And furthermo
re as I haue herde say a custome or a prescrip-
cion in this realme agaynst the statutes of the
realme preuayle not. ¶ Student) though a cu
stome in this Realme preuayleth not agaynst
a statute as to the lawe / Yet it semyth that it
may preuayle agaynst the statute in conscyen
ce/for though ygnoraũce of a statute excusyth
not in the lawe / neuertheles it may excuse in
conscyence/ and so it semyth that it may do of
a custome. ¶ Doctour) but if suche recoueryes
can not be brought in to a lawfull custome in
the lawe/it semyth they may not be brought i
to a custome in conscyence/ for ꝯscyence muste
alway be groundyd vpon some lawe: and in
this case it can not be groũdyd vpon the lawe
of reason/nor vpon the lawe of god: and ther
fore if the lawe of man serue not / there is no

grounde wherupon cōscyence in this case may be groundyd / and at the begynnynge of suche recoueres they were taken to be good bycause the lawe shulde waraunte them to be good & not by reason of any custome / and so if the reason of the lawe wyll not serue ī tho recoueres The custome can not helpe for an euyll custome is to be put awaye / And therfore me semyth that tho recoueres be not without offence agaynst god: though haplye for theyr great multytude & that there shuld not be as it were a subuersyon of the inherytaunce of many in this realme as well of spyryall as temporall: they be without payne in the lawe of the realme / excepte suche recoueryes as by the comon cours of the lawe nowe vsyd be voydable in the lawe by reason of some vse / or of some other specyall mater / but what offence that is I wyll not temerously Juge / but cōmytte it to the goodnes of our Lorde whose Jugementes be very depe and profounde / nor I wyll not fully afferme that they that haue landes by suche recoueryes ought to be compellyd to restytucion / but this semyth to me to be good counceyll that euery man holde that is certayne & leue that is vncertayne: and that is that he kepe hym self from suche recoueryes & then

he shalbe fre from all scrypulousnes of conscyence/ in that behalfe. ¶ Student) It semyth that in this questyon thou ponderyst greatlye the sayd statute of Westm.the.ii.& that though it be but onely a lawe made by man/that yet for as moche as it is not agaynst the lawe of reason / nor the lawe of god / thou thynkeste that it must be holden in conscyence/and ouer that as it semyth thou art somwhat in doubte whether those recoueries be any barr to the heyre in the tayle by the lawe of the realme onles that he haue in value in dede vpon the voucher/& that thou wylt therupon take a respyte or thou shewe thy full mynde therin/& in lyke wyse thou thynkest as I take it that those recouerys can not be brought in to a custome/ but that the longer that they be suffred to contynue if they be not good by the lawe the greater is the offence agaynst god / And therfore thou pōderyst lytle that custome/ but yet thou agreest that it is good to spare the multytude of them leste a subuercion of the inherytaunce of many of this realme might folowe & great stryfe & varyaūce also if they shuld be adnulled for the tyme past except there be any other especyal cause to auoyde them by the lawe as thou hast touchyd i thy last reasō/but thou thi

concernynge tayled lande.

kyst that it were good that fro hensforth suche recoueryes shuld be clearely prohybyt & not be suffred to be had in vse as they haue ben byfore: and thou counceyllest all men therfore to refrayne them self from suche recoueryes. ¶ Doctoure) thou takest well that I haue sayd and accordynge as I haue mente it. ¶ Student) nowe I pray the syth I haue herde thy questyon of these recoueryes accordynge to thy desyre that thou woldest answere me to some ꝑtyculer questyons cōcernynge tayled landes: wher of thou hast at this tyme gyuen vs occasyon to speke. ¶ Doctoure) shewe me those questyons/and I wyll shewe the my mynde therin with good wyll.

¶ The fyrste questyon of the student concernynge tayled landes.

Student) If a dyssesoure make a gyfte in the tayle to Johñ at style: and that Johñ at style for the redemynge of the tytle of the dissesye agreyth with hym that he shall haue a certayne rente out of the same lande to hym and to

The fyrste questyon of the student
his heyres/and for the suretye of that rent it is
dyuysed that the disseysye shal release his ryght
in the lãde.&c.and that suche a recouery as we
haue spoken of byfore shalbe had agaynst the
sayde Johñ at stryke to the vse of the payment
of the sayd rent & of the former tayle whether
standyth that recouery well with conscyence
or not. ¶ Doctoure) I suppose it doth for it is
made for the strengthe and suertye of the tayle
whiche the dysseysye myght haue eleterly defea-
tyd and auoyded if he wolde/ and therfore as
I thynke if the sayd Johñ at style had graun
tyd to the disseasye oonly by his dede a certay-
ne rent for the releasige of his tytle that graũt
shulde haue bounde the heyres in the tayle for
euer. And then if the disseysye for his more suer
tye wyll haue suche a recouerye as byfore ap-
peryth it semyth that that recouerye standeth
with good cõscyence. ¶ Student) It semyth
that thy oppynyon is ryght good in this ma-
ter. And so it apperyth that with a reasonable
cause some partyculer recouryes may stande
bothe with lawe & conscyence to barre a tayle.

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¶ The seconde questyon of the student
concernynge tayled landes.

concernynge tayled lande.

(Student) If tenaunt in tayle suffre a recouetye agaīſt hym of the landes entayled to the entent that the recouerers ſhal ſtande ſeaſed therof to the vſe of a certayne woman whom he entendyth to take to his wyfe/for terme of her lyfe/and after ter to the vſe of the fyrſte tayle: and after he maryeth the ſame woman/whether ſtandeth that recouery with cōſcyence not hauyng any reſpecte to the cōmon vſe of the ſayd recouerye/ nor yet to the great multytude of theym.

(Doctour) It ſemyth yes/for though the ſtatute be/that they to whom the tenītes be ſo gyuen ſhulde not haue power to alyen/but that the landes after theyr deth ſhulde remayne to theyr yſſues or reuert to the donours if the yſſues fayled:yet if he to whom the landes were ſo gyuen take a wyfe & dyeth ſeaſed without heyre of his body/and the donour entre the woman ſhall recouer agaynſt hym the thyrde parte to holde in the name of her dowre for terme of her lyfe though the tayle be determyned/& the ſame lawe is of tenaūte by the curteſy:that is to ſay of hym that ſhall marye one that is an enherytrix of the landes entayled and they haue yſſue the wyfe dyeth and the yſſue dyeth:he

The seconde questyon of the student
shall holde the landes for terme of his lyfe as
tenaunte by the curtesye/not withandyng the
wordes of the statute which say that after the
deth of the tenaunt in tayle without yssue the
landes shall reuert to the donour/and I thynke the cause is bycause the intent of that statute shall not be taken that it intendyd to put away suche tytles as the lawe shulde gyue by reason of the tayle/and so it semyth that a lyke entent of the statute shalbe taken for ioyntures/ for els the statute myght be somtyme a lettyng of matrymony:and it is not lyke that the statute intendyd so / and so it semyth that by the oonly deed of the tenaũt intayle a ioyntour may be made by the intent of the statute/ thoughe the wordes of the statute serue not expressely for it/for many tymes the ītent of the letter shalbe taken and not the bare letter / as it apperyth in the same statut where it is sayd that he to whom the landes be gyuen shal haue no power to alyen / yet the same statute is construed that neyther he nor his heyres of his body shall haue no power to alyen:and so me thynketh that suche an intent shalbe taken here for sauyng of ioyntours. ¶ Stud) trouth it is that somtyme the intent of a statute shall be taken ferther than the expresse letter stret

chyth/ but yet there may no entent be taken a/ gaynst the expresse letter of the statut/ for that shuld be rather an interpretacion of the statute then an exposycion / & it can not be resonably taken/ but that the intent of the makers of the statute was that the lande shuld remayne con tynually in the heyres of the tayle as longe as the tayle enduryth/ and there can no ioyntour be made neyther by dede nor by recouerye/ but that the tayle must therby be dyscontynued/ & therfore this case of Joyntoure is not lyke to the sayd cases of tenaunt in dower or tenaũt by the curtesy: for the tytle of dowry and of te/ nauntcy by the curtesy groweth moste special ly by the contynuaunce of the possession in the heyres of the tayle / but it is not so of Joyn/ tours/ and therfore by the oonly deed of the te/ naunt intayle/ there may no ioyntour be la we fully made agaynst the expresse wordes of the statute. And if there be any made by waye of recouery then it semyth that it must be put vn der the same rewle as other recouerys muste be of landes intayled.

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¶ The thyrde questyon of the student concernynge tayled landes.

STudent) If Johñ at noke be/ ynge seasyd of landes in fee of his mere mocion make a feoffe ment of certayne landes to the intent that the feoffes shal ther of make a gyfte to the sayde Johñ at noke to haue to hym and to his heyres of his body and they make the gyfte accordyng. And after the sayd Johñ at noke fallyth in to dette / wher/ fore he is taken and put in pryson/ & therupon for payment of his dettes he selleth the same lande/ and for suertye of the byer he sufferyth a recouery to be had agaynst hym in suche ma ner as byfore appertyth / whether standeth that recouerye with conscyence or nat. ¶ Doctour) I wolde here make a lytell digression to aske the another questyon or I made answere to thyne / that is to saye to fele thy mynde how/ that la we by the which the body of the dettour shalbe taken & caste in pryson there to remayn tyll he haue payde the dette maye stande with conscyence specyallye if he haue no thynge to paye it with / for as it semyth if he wyll relyn quysh his goodꝭ whiche in some la wes is cal/ lyd in latyn cedere bonis that he shall not be in prysoned / & that is to be vnderstande most specyally if he be fallen in to pouertie and not

thorugh his owne defaute. ¶ Student) there is no lawe in this realme that the defendaunt may in any case cedere bonis / & as me semyth if there were suche a lawe it shuld not be indifferent / for as to the knowlege of hym that the money is owynge to the dettour myght cedere bonis / that is to say relynquysh his goodes & yet retayne to hym selfe secretely great ryches And therfore that lawe in suche case semyth more indyfferēt & ryghtuouse that cōmyttyth suche a dettoure to the conscyence of the playntyfe to whom the money is owyng then that cōmyttyth hym to the conscyence of hym that is the dettour / for in the dettoure some defaute may be assygned: but in hym to whom the money is owynge may be assygned no defaute. ¶ Doctour) but if he to whom the dette is owynge knoweth that the dettoure hath no thynge to paye the dette with / & that he is fallen in to that pouertye by some casualtye: And not thorughe his owne defaute / dothe the lawe of Englande holde that he may with good conscyence kepe the dettour styll in pryson tyll he be payde. ¶ Student) nay verely / but it thynkyth more resonable to appoynt the lybertie & the Jugement of conscyence in that case to the dette then to the dettour: for the cause byfore re

herſyd. And then the dette / if he knowe the trouth is as thou haſte ſayd bounden in conſcyence to let hym go at lybertie though he be not compellable therto. And therfore admyttyng it for this tyme that the lawe of Englande in this poynte is good and iuſte. I pray the that thou wylte make anſwere to my queſtyon.

(Doctour) I wyll with good wyll / & therfore as me ſemyth for as moche as it apperyth that the ſayd gyfte was made of the mere lybertie & fre wyll of the ſayde Johñ at noke / & without any recompence / that therfore it can not be other wyſe taken / but that the intent of the ſayd Johñ at noke as well at the tyme of the ſayd feoffement / as at the tyme that he receyued agayn the ſayd gyfte in the tayle / was that if he happenyd after wardes to fall in to pouertye / that he myght alyen the ſayd lande to relefe hym with: for how may it be thought that a man wyll ſo moche pondre the welth of his heyres / that he wyll forget hym ſelfe / and ſo it ſemyth that not oonly the ſayd recouerye ſtandyth with conſcyence: but alſo that if he made oonly a feffemēt of the lande / that that feffement ſhuld be in conſcyence a good barre of the tayle / but if the ſayd feoffement & gyfte had ben made in conſyderacyon of any recom-

pence of money or for any matrymonye or su-
che other / that then the feoffement of the sayde
Johñ at noke shuld not bynde his heyre / and
if he then suffred any recouery therof / thanne
that recouery shulde be of lyke effecte as other
recoueryes wherof we haue treatyd byfore / &
the whiche I sayde it was good to fauour ra-
ther for theyr multytude then for the cõscyence
and the same lawe is that if the sone and the
heyre of the sayd Johñ at noke in case that the
sayd gyfte was made without recompence a-
lyen the lande for pouertie after the deth of his
father that recouerye byndeth not but as other
recoueryes do / for it can not be thoughte that
thyntent of the father was that any of his hey
res in tayle shulde for any necessytie dysheryte
all other heyres in the tayle that shulde come
after hym / but for hym selfe me thynketh it
is resonable to Juge in suche maner as I ha-
ue sayd byfore. ¶ Student) And if the intent
of the sayde Johñ at noke when he made the
sayd feoffement / and when he toke agayn the
sayd gyfte in tayle were that if he fell in nede
that he might alyen: yet I suppose that he may
not alyen though percase for the more suertye
he declared his intent to be suche vpon the ly-
ueryes of season: for that intent was contrary

to the gyfte that he fyrste toke vpon hym: and when any intent or condycyon is declaryd or reseruyd agaynst the state that any man maykyth or acceptyth: then suche an intent or condycion is voyde by the lawe as by a case that hereafter folowyth wyll appere / that is to say if a man make a feoffement in fee vpon condycion that the feffe shall not alyen it to any mā that condycion is voyde: for it is inadent to euery state of fee symple that he that is so seasyd may alyen. And as in a fee symple there is īcydent a power to alyen: so in a state tayle ther is a secrete intent vnderstāde in the gyfte that no alyenacyon shalbe made. And therfore though the intent of the sayd Johñ at noke were that if he fell in to pouertie that he myght sell / and though he at the takynge of the gyfte openly declared his intent to be so: yet that intent shulde be voyde by the lawe / and if it be voyde by the lawe it is also voyde in conscyence / and so the sayde recouery muste be taken in this case to be of the same effecte as recoueryes of other landes intayled be / and in none other maner.

¶ The.iiii.questyon of the Student concernyng recouetyes of enherytaūce entayled.

concernynge tayled lande.

Student) If any annuyte be grauntyd to a man to haue & to perceyue to the grauntour & to the heyres of his body atdale &c. of the grauntours and theyr succ or of the grauntoure and his heyres if he be a lay man that maketh the graunte. And after the grauntee sufferyth a recouere agaynst hym in a Wrytte of entre by the name of a rent in dale of lyke sume as the annuite is of With vou chers and iugement after the cōmon course / & both partyes intende that that annuyte shall be recoueryd: Whether shall that recouere bynde the heyre in the tayle of this annuyte. ¶ Doctoure) What if it were a rent goynge oute of lade of What effecte shuld the recouere be then ¶ Student) It shulde be then of lyke effecte as if it were of lande. ¶ Doctoure) And so it semyth to be of this annuyte / for as me thynketh a rent and an annuyte be of one effecte / for the one of them shalbe payde in redye money as the othet shal. ¶ Studēt) that is trouth and yet there be many great dyuersytyes bytwyxt them in the lawe. ¶ Doctour) I pray the shewe me some of tho dyuersytyes. ¶ Student) patte I shall shewe the / but I wot not whether I can shewe the all / but fyrste thou shalt Understande that one dyuersytye is this

Euery rent be it rent seruyce / rent charge / or rent seke: is goynge out of lāde / but an annuyte goth not out of any lande / but chargeth only the person: that is to say the grauntour or his heyres that haue assez by dyscent / or the house if it be grauntyd by a house of Relygyon to perceyue of theyr cofers. Also of an annuyte ther lyeth no accyon but oonly a wrytte of annuyte agaynst the grauntour his heyres or succ / & that wrytte of annuyte lyeth neuer agaynste the pernoure / but of a rent the same accyons maye lye as do of lande as the case requyreth / & it lyeth somtyme of rent agaynst the tenaunt of the grounde / and somtyme agaynst the pernour of the rent / that is to say agaynst hym that takyth the rent wrongfully / & somtyme agaynst neyther: as of a rent seruyce assyse may lye for the lorde agaynst the mesne & a disseysoure / or somtyme agaynst the mesne only. Also an ānuyte is neuer taken for an asses bycause it is no freholde in the lawe / ne it shall not be put in execucyon vpon a statute merchaunt / statut staple ne elegt as rent may And bycause the sayd wrytte of entre lay not in this case of this annuyte. And that it cannot be intendyd in the lawe to be the same annuyte / though it be of lyke sūme with the an-

nuyte: ne though the partyes assentyd & ment to haue the same ānuyte recouerȳd by the said writte of entre: therfore the sayde recouere is voyde in lawe and conseyence: but if suche a recouere be had of rent with a vouchet ouer/ then it shalbe taken to be of lyke effect as recouerȳes of landes be in suche maner as we haue treatyd of byfore.

¶ The. v. questyon of the student concernynge tayled landes.

STudent) If landes be gyuen to a man & to his wyfe in the name of his ioynture by the father of the husbonde to haue & to holde to them and to the heytes of theyr two bodyes begotten / and after they haue yssue and the husbonde dyeth / & the wyfe alyen the lande & suffre a recouery therof to be had agaynst her to the vse of the byer: and after her sone and heyre apparaunt / that is heyre to the tayle releasyth to the recouerers by fyne and dyeth hauynge a brother on lyue: and after the mother dyeth who hath ryght to that lande the byer or the brother of hym that releasyd. ¶ Doctoure) What is thyn opynyon

therin/I praye the shewe me. ¶ Student) me
semyth that the byer hath ryght/ for by the sta/
tute made in the.xi. yere of kynge Henry the.
viii. amonge other thynges it is enacted that if
any woman whiche hath landes of the gyfte
of her husbonde/or of the gyfte of any of the
auncetoures of the husbonde: suffre any re/
couerye therof agaynst her by couyn/that then
suche recouerye shall be voyde/and that it
shall be lawfull to hym that shulde haue the
lande after the dethe of the woman to entre
it to holde as in his fyrste ryght/prouyded al/
way that that statute shall not extende whe/
re he that shuld haue the lande after the deth of
the woman is agreable to any suche alyenacy
on or recouery: so that/that agrement be of re/
corde/And for as moche as the heyre in this ca
se agreed to the sayd recouery by fyne/whiche
is one of the hyest recordes in the lawe: it semyth
that the byer hath ryght agaīst that heyre that
agreed and agaynst all that shalbe heyres of
the tayle/& that not only by the sayd recouery
but also by the sayd statute wherby the sayde
recouerye with the assent of the heyre is affer/
myd. ¶ Doctoure (though the byer in this case
haue ryght durynge the lyfe of the heyre that
releasyd/yet neuertheles after his deth his hey

re may lawfully entre / for the agremēt wher of the statute spekyth muste eyther be had by/ fore the recouerye / or els at the tyme of the reco uerye / for if a tytle by reason of the sayd statu te be ones deuolute to the heyre in the tayle / then that right as it semyth can not be extinct nor put away by the oonly fyne of the heyre / no more than if he had dyed and the next hey/ re to hym had releasyd to the byer by fyne / in whiche case that release coulde not extinct the ryght of the tayle / nor the ryght of entry that is gyuen by the statute / and so as me semyth his next heyre may therfore enter. ¶ Student as I perceyue all thy dowte is in this case by/ cause the assent of the heyre was aft̄ the recoue rye: for if it had ben at the tyme of the recouery as if the heyre had ben vouched to warrantye in the same recouery and he had enterryd / and therupon the Jugement had be gyuen: that re couerye shuld haue auoydyd the tayle for euer. ¶ Doctour) that is true for it is in the expresse wordes of the statute / but when the assent is after the recouerye / then me thynketh it is not so: ne that the ryght of the fyrste tayle / whiche was reuyued by the sayd statut shal not be ex tincte by his fyne: nomore then it shall in other tayles. ¶ Student) I wyl be aduysed vpon

thy oppynyon in this mater: but yet one thynge
wolde I moue ferther vpon this statute/and
that is this/ some say that by this statute all
other recouerys that haue ben had/ ouer & be/
syde these recouerys of Joyntures be affer/
myd/for they say that syth the Parliament at
the makyng of this statute/knewe well that
many other recouerys were then vsed & had
to defete taylles and that it was lyke that they
wolde so contynue / whiche neuertheles the
Parlyament dyde not prohybyte for the tyme
to come as it dyd the sayd recouerys of Joyn
turs: that it is therfore to suppose that they tho/
ught that they shuld stande with lawe and co
scyence: but bycause Joyntures were made ra
ther for the sauynge of the Inherytaūce of the
husbonde/then to dystroy the Inherytaunce/
they say that the Parlyamēt thought and ad/
iugyd the alyenacions and recouerys of such
Joyntures to be agaynst the lawe and consci
ence and not the alyenacon of other landes en
tayled/for if they had they say/ that the Par/
lyament wolde haue aduoyded recouerys of
tayled landes generally as well as it dyd of re
couerys of ioyntures. ¶ Doctoure) as to that
oppynyon I wyll answere the thus for this
tyme/that though that the makers of the sayd

estatute oonly put away recoueryes of ioyn-
tures/ and not other recoueryes that yet it can
not be taken therfore that theyr entent was
that the other recoueryes shulde stande good & perfyte/ for they speke then oonly of ioyntures
bycause there was no complaynt made in the
Parlyament at that tyme/ but agaynst reco-
ueryes had of ioyntures: and therfore it semyth
that they intendyd nothyng concernyng other
recoueryes: but that they shulde be of the same
effecte as they were byfore and no other wyse.
& that wyl appere more playnly thus: though
the makers of the sayd estatut entended to put
awaye and adnull suche recoueryes as shulde
be made of ioyntures after a certayne day ly-
mytted in the statute: that yet they entendyd
not to aduoyde ne afferme suche recoueryes of
Joynturs as were passed byfore that tyme/ &
if they intendyd not to auoyde ne afferme the
recoueryes had of ioyntures byfore that tyme:
then how can it be taken that they intended to
put away or to afferme other recoueryes that
were passed byfore that tyme and not of ioyn
tures/ that wolde not afferme ne put away re-
coueryes passed of ioyntures byfore that tyme
And so as it semyth they intendyd to spare the
multytude of them that were passyd of bothe

and not to cõforte any to take them after that tyme. ¶ Student) I am content thy oppynyõ on stande for this tyme / and I wyll aske the another questyon.

¶ The.vi.questyon of the student concernynge tayled landes.

Student) If tenaũt in tayle be dissey syd and dye & an Auncester collateral to the heyre in the tayle release with a warantye & dye and the waranty descendyth vpon the heyre in the tayle / whether is he ther by barred in conscyence / as he is in the lawe. ¶ Doctour) bycause our pryncypall intent at this tyme is to speke of recouerves / and not of warantyes and also bycause it hath ben of lõge tyme taken for a pryncipall maxym of the lawe that it shuld be a barr to the heyre as wel that claymeth by a fee simple as by a state tayly / & for that also that it was not put a waye by the sayd statute of Westm. the.ii. whiche ordayned the tayle I wyll not at this tyme make the any answere therin / but wyll take a respyte to be auysed. ¶ Student) then I pray the

yet or we depte shewe me what was the most pryncipall cause that moued the to moue this questyon of recoueryes had of tayled landes.
¶ Doctoure) This moued me therto/ I haue perceyued many tymes that there be many dyuers oppynyons of those recoueryes/ whether they stande with conscience or not/ and that it is to dowte that many psones ren in to offence of cōscyence therby. And therfore I thought to fele thy mynde in them whether I coulde perceyue that it were clere that they seruyd to breke the tayle in lawe and conscyence/ or that it were clerelye agaynst cōscyence so to breke the tayle/ or that it were a mater in dowte/ and if it apperyd a mater in dowte / or that it apperyd that the mater were vsed clerely agaynst conscyence/ then I thought to do somwhat to make the matyer appere as it is to the intent/ that they that haue the rule & the charge ouer the people as well the spūall men as tēporall men: shuld the rather endeuer them to se it reformyd for the cōmon welth of the people as wel in bodye as in soule/ For when any thynge is vsed to the dyspleasure of god: it hurtyth not only the body but also the soule: And tēporall rulers haue not only cure of the bodyes: but also of the soules: & shal answere for them if they

peryssh e in theyr defaute: & bycause it semyth by the more apparaunte reason that the tayles be not broken ne fully auoydyd by the said recoueryes: and that yet neuerthelesse the great multytude of them that be passed is ryght moche to be ponderyd, therfore it were very good to prohybyte theym for tyme to come / to put away suche ambyguyties and dowtes as be nowe by occasyon of the sayd recoueryes / and so they be but as snares to deceyue the people / and so wyll they be as longe as they be sufferyd to cōtynue. And me thynketh veryly that it were therfore right expedient that tayled lande shuld from hensforth eyther be made so stronge ī the law that the tayle shuld not be broken by recouerye fyne with proclamacion collateral warrantye nor otherwyse or els that all tayles shuld be made fee symple: so that euery man that lyste to sell his lande myght sell it by his bare feoffement and without any scryple or gruge of cōscyence: and then there shuld not be so great expenses in the lawe / nor so great varyaunce amonge the people: ne yet so great offence of cōscyence as there is nowe in many persones. ¶ Student) veryly me thynketh that thy opynyon is ryght good and charytable in this behalfe. And that the rulers be

concernynge tayled lande.
bounde in cōscyence to loke well vpon it to se
it reformed and brought in to good ordre. And
veryly by that thou hast sayd therin thou hast
brought me in to remembraunce that there be
dyuerse lyke snares concernynge Spyrytuall
matyers suffred amonge the people / wherby
I dowte that many Spyrytuall rulers be in
great offence agaynste god: As it is of that
poynt that the spyrytuall men haue spoken so
moche of that prestes shulde not be put to an-
swere byfore lay men specyally of felonyes &
murders / & of the statute of .xl v. E. iii. the .iii.
chapitre where it is sayde that a prohybycyon
shall lye / where a man is sued in the spyrytu-
all courte for tythe of wood that is aboue the
age of .xx. yere / by the name of Silua cedua
as it hath done byfore / and they haue in opyn
Sermons and in dyuers other open cōmuny-
cacyons and counsaylles caused it to be open-
ly notefyed and knowen that they shuld be al
accursed that put prestes to answere / or that
maynteygne the sayd estatute / or any other ly-
ke to it. And after when they haue ryght well
preyued that notwithstandynge all that they
haue done therin it hath ben vsed in the same
poyntes thorugh all the realme in lyke maner
as it was byfore: Then they haue sytte styll &

lette the matyer passe/ and so when they haue brought many persones in great daũger: but moste specyally them that haue gyuen credence to theyr sayinge / & yet by reason of the olde custome haue done as they dyde byfore / then there they haue lefte them / but verely it is to feare that there is to them selfe tyght great offence therby / that is for to saye to se so many in so great daunger as they saye they do: And to do no more to bringe theym out of it / then they haue done / for if it be true as they saye / they ought to stycke to it with effect in all charytie tyll it were reformyd: And if it be not as they say then they haue caused many to offende that haue gyuen credence to theym / and yet contrarye to theyr owne conscyence do as they dyd byfore / and that percase shuld not haue offendyd if suche sayinges had not ben. And so it semyth that they haue in these matyers done eyther to moche or to lytell. And I beseche almyghty god that some good man may so call vpon all these matyers that we haue nowe cõmonyd of: so that they that be in Auctoryte myght somwhat pondre theym / and to ordre theym in suche maner that offence of conscyence grow not so lyghtly therby hereafter as hath done in tyme paste / And verylye he that

on the Crosse kneWe the pryce of mānes soule Wyll hereafter aske a ryght strayte accompte of rulers/for euery soule that is Vnder theym and that shal perysshe thorugh theyr defaulte. And thus I make an ende for this tyme/and cōmytte the Vnto our Lorde Jhesu/ Who preserue bothe the and me. A M E N.

∴ ∴ ∴

Here endeth dyuerse Argumentes and reasons made by occasyon of a Questyon/ Whiche the Doctour made to the Student Howe the Recouerynes Whiche be cōmonly Vsed to defete tayled landes/may stande With conscyence.

¶ Imprynted
by me Robert wyer/dwellynge
in seynt Martyns parysshe
in the felde/ beside Cha=
ryngcrosse/in the Bys
shop of Norwyche
Rentes.

MON
DIEV ET DROVT
HONY SOVT QVI MAL Y PENSE